

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number 15.mm.

Meeting Type: Regular

Meeting Date: 7/26/2012

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Fifth Amendment to agreement with Toyota

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute the 5th Amendment to the Project Diamond Agreement (Toyota) among the State of Alabama, the City of Huntsville, Madison County, Alabama, and Toyota Motor Manufacturing, Alabama, Inc.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 7/26/2012

Adopted: \_\_\_\_\_

RESOLUTION NO. 12- \_\_\_\_\_

WHEREAS, the State of Alabama, Madison County, the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc., entered into an agreement for the location of a Toyota manufacturing facility in the North Huntsville Industrial Park, as amended by: that certain First Amendment to Project Diamond Agreement dated as of December 4, 2003 (the "First Amendment"); by that certain Second Amendment to Project Diamond Agreement dated as of December 16, 2004 (the "Second Amendment"); by that certain Third Amendment to Project Diamond Agreement dated as of October 14, 2010 (the "Third Amendment"); and by that certain Fourth Amendment to Project Diamond Agreement dated as of July 1, 2011, and by that certain Fifth Amendment to Project Diamond Agreement dated as of July 26, 2012 (the "Fifth Amendment;" the original agreement, as modified by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment (hereinafter referred to as the "Project Diamond Agreement"); and

WHEREAS, each of the parties to the agreement are responsible for certain financial and other obligations thereunder; and

WHEREAS, the City of Huntsville has authorized the lease of an approximately 108 acre tract and an approximately 26 acre tract in the North Huntsville Industrial Park (collectively, the "Phase IV Land") to the Industrial Development Board of the City of Huntsville pursuant to a Ground Lease Agreement between the City of Huntsville and the Industrial Development Board of the City of Huntsville in substantially the form attached hereto as Exhibit A (the "Ground Lease"), for lease, and potential ultimate sale, to Toyota Motor Manufacturing, Alabama, Inc., pursuant to a Sub-Ground Lease Agreement between the Industrial Development Board of the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc., in substantially the form attached hereto as Exhibit B (the "Sub-Ground Lease"); and

WHEREAS, the Ground Lease and Sub-Ground Lease provide for certain options and rights of first refusal in favor of Toyota Motor Manufacturing, Alabama, Inc., with respect to the Phase IV Land; and

WHEREAS, pursuant to the Sub-Ground Lease, the Industrial Development Board is required to perform certain obligations; and

WHEREAS, it is the intent of the City Council of the City of Huntsville, to approve the Fifth Amendment to Project Diamond Agreement in substantially the form attached hereto as Exhibit C, to ratify the Project Diamond Agreement, to approve the Ground Lease, to approve the form of the Sub-Ground Lease and to guaranty the

performance of the Industrial Development Board under the Fifth Amendment to Project Diamond Agreement and the Sub-Ground Lease referenced hereinabove.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into an Amendment to Project Diamond Agreement, which said agreement is attached hereto and identified as "Fifth Amendment to Project Diamond Agreement among the City of Huntsville, the State of Alabama, Madison County, Alabama, and Toyota Motor Manufacturing, Alabama, Inc.," consisting of fourteen (14) pages including Exhibits A and B, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama, and the City Council of the City of Huntsville does hereby ratify the Project Diamond Agreement; and

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into a Ground Lease which said agreement is attached hereto and identified as "Ground Lease Between the City of Huntsville and the Industrial Development Board of the City of Huntsville," consisting of forty-six (46) pages including Exhibits, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama; and

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into a Sub-Ground Lease which said agreement is attached hereto and identified as "Sub-Ground Lease Between the City of Huntsville and the Industrial Development Board of the City of Huntsville," consisting of sixty-two (62) pages including Exhibits, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an execute copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama; and

BE IT FURTHER RESOLVED, that the City of Huntsville does hereby guarantee the performance of all obligations of the Industrial Development Board under both the Fifth Amendment to Project Diamond Agreement and the Sub-Ground Lease between the Industrial Development Board of the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc.; and

BE IT FURTHER RESOLVED, that any options and rights of first refusal set out in the Sub-Ground Lease are binding on the City for so long as title to such land remains in the City, and the City agrees to allow Toyota Motor Manufacturing, Alabama, Inc., to exercise any such options on the terms and conditions set out in the Sub-Ground Lease by providing notice thereof to the City, and the City agrees in such event to honor the obligations of the Landlord under the Sub-Ground Lease.

ADOPTED this the 26th day of July, 2012.

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President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the 26th day of July, 2012.

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Mayor of the City of Huntsville,  
Alabama

EXHIBIT A  
FORM OF GROUND LEASE

**GROUND LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF HUNTSVILLE,  
AN ALABAMA PUBLIC CORPORATION,**

**AS LANDLORD**

**AND**

**INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE, AN  
ALABAMA PUBLIC CORPORATION**

**AS TENANT**

**DATED AS OF JULY \_\_\_\_, 2012**

## **GROUND LEASE AGREEMENT**

**THIS GROUND LEASE AGREEMENT** (this "Lease") is made and entered into as of the Commencement Date (defined herein), by and between **THE CITY OF HUNTSVILLE**, a public corporation organized under the laws of the State of Alabama (herein referred to as the "Landlord") with its principal office at 308 Fountain Circle, Post Office Box 308, Huntsville, Alabama 35804-0308, and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE**, a public corporation (herein referred to as "Tenant"), with its principal office at 225 Church Street, Huntsville, Alabama 35801.

### **WITNESSETH:**

WHEREAS, Toyota Motor Manufacturing, Alabama, Inc., an Alabama corporation ("Toyota") constructed, owns and operates a motor manufacturing facility (the "Original Project") on approximately 197.5 acres located at 1 Cottonvalley Drive, Huntsville, Alabama 35810 (the "Original Project Site"), in the North Huntsville Industrial Park (the "Industrial Park"); and

WHEREAS, in order to induce Toyota to construct the Original Project in the City of Huntsville, Madison County, Alabama, over many other sites outside the City of Huntsville being evaluated by Tenant, the State of Alabama, the County of Madison, Alabama, the City of Huntsville and Tenant entered into that certain Project Diamond Agreement dated February 5, 2001, as amended by: that certain First Amendment to Project Diamond Agreement dated as of December 4, 2003 (the "First Amendment"); by that certain Second Amendment to Project Diamond Agreement dated as of December 16, 2004 (the "Second Amendment"); by that certain Third Amendment to Project Diamond Agreement dated as of October 14, 2010 (the "Third Amendment"); and by that certain Fourth Amendment to Project Diamond Agreement dated as of July 1, 2011 (the "Fourth Amendment"), as amended by that certain Fifth Amendment to Project Diamond Agreement dated as of July 26, 2012 (the "Fifth Amendment;" the original agreement, as modified by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment, is hereinafter referred to as the "Project Diamond Agreement"; and

WHEREAS, Toyota has agreed to further expand the scope of the Original Project and has agreed to make an additional capital investment for the construction of a 2 GR Line Engine facility, access road and related improvements and related facilities appurtenant thereto, which may include related facilities on the Phase IV Land owned by vendors or contractors of Toyota (collectively, the "Phase IV Project"); and

WHEREAS, in order to induce Toyota to construct the Phase IV manufacturing facility in the City of Huntsville, Madison County, Alabama, the parties hereto have entered into this Agreement; and

WHEREAS, Landlord is the sole owner of a fee simple interest in and to certain real property comprised of (i) the approximately 26 acre tract of land located immediately to the north of

the Original Project Site, and (ii) the approximately 108 acre tract of land located immediately to the east of the Original Project Site and described on the site plan attached hereto as Exhibit A and made a part hereof attached hereto and made a part hereof (herein referred to as the "Property"); and

WHEREAS, in conjunction with this lease and the sub-ground lease between the Industrial Development Board of the City of Huntsville and Toyota, Toyota will likely spend substantial amounts of time and money in the planning and construction of the Phase IV Project; and

WHEREAS, Landlord is charged with the statutory responsibility to promote industrial development within the City of Huntsville, County of Madison, Alabama; and

WHEREAS, in order to enable Landlord to carry out the responsibilities set forth above, Landlord has the power and authority pursuant to Alabama Code §11-20-30 et seq. (1975) to rent, lease, buy, own, acquire, mortgage, sell, convey, transfer, assign and otherwise dispose of property; and

WHEREAS, Landlord desires to lease and to sell (subject to the terms of the purchase option contained herein), the Property to Tenant, for ultimate lease and potential sale to Toyota, pursuant to the terms hereof; and

WHEREAS, Tenant desires to lease the Property from Landlord; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth and the sums herein to be paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Landlord and Tenant hereby mutually covenant and agree as follows:

1. GRANT.

A. Landlord hereby demises, rents and leases to Tenant, and Tenant hereby leases and hires from Landlord, the Property, together with:

(1) Any and all rights and privileges directly or indirectly in any way belonging to or under the control of the Landlord, or any affiliate or agency thereof, or any party acting upon and on their behalf (the foregoing being, collectively, "Landlord's Agents"), or in which Landlord or Landlord's Agent has an interest on or as of the date of this Lease or thereafter, as leasehold owner of or appurtenant to the Property or otherwise, in, to or in respect of rights of real estate pertaining, connected, subordinate or in proximity to the Property, including without limitation, strips, gores, easements, options, after-acquired title, development rights, condemnation awards, claims, oil, gas, sand, gravel, limestone, bedrock, water or mineral rights, or rights of way (the foregoing, together with the rights and matters set forth in Section 1.A.(3) below, being collectively, the "Appurtenant Rights");



(2) Any and all buildings, structures, fixtures and other improvements hereafter located upon, in or under or placed upon, in or under the Property during the term (as such term is herein defined) of this Lease, including without limitation the Phase IV Project and all equipment appurtenant thereto (the foregoing being, collectively, the "Improvements"); and

(3) Any and all right, title and interest of Landlord or any Landlord's Agent in, to and under any adjoining streets, alleys, public docks, bridges and other public ways;

The Property (except as otherwise excluded pursuant to Section 11.G. hereof), and all the rights, interest and appurtenances set forth above, are hereinafter jointly or severally, as the context may require, referred to as the "Premises."

B. Landlord hereby represents and warrants to, and covenants with, Tenant that as of the date hereof, and as of the Commencement Date (as such term is defined herein), Landlord owns a fee simple interest in and to the Property free and clear of all liens, encumbrances, easement and servitudes, except as to those which are a matter of public record, which are approved by Tenant and which will not interfere with the use of the Phase IV Land by Tenant for its intended purpose. (said exceptions are herein referred to as the "Permitted Exceptions") and has all necessary right, authority and power to lease and demise the Premises. In reliance upon the representations, warranties and covenants of Landlord contained in this Lease, including but not limited to those contained in this subsection and in Sections 11 and 22, Tenant hereby accepts this Lease and leasehold estate and the rights and interest herein created in its favor, subject only to the Permitted Exceptions. Landlord covenants and agrees with Tenant that during the term of this Lease, it shall not convey, release, grant, encumber, restrict, pledge, mortgage or quitclaim all or any part of the Premises except as expressly provided for herein or with Tenant's prior written consent, which consent may be withheld in Tenant's sole and absolute discretion. Landlord hereby grants the right in favor of the Tenant to require the Landlord to grant a perpetual easement over the Phase IV Land in favor of Tenant, providing access, the right to repair and maintain any improvements constructed thereon or on the Original Project Site by Tenant, and prohibiting the construction of any improvements thereon by any party other than Tenant, without Tenant's prior written consent (the "Easement"). The parties agree to negotiate in good faith said Easement in recordable form. Further, at any time during the Lease Term, at Tenant's request, Landlord will negotiate with either Tenant or Toyota for an option to acquire the Phase IV Land.

## 2. TERM.

A. The term of this Lease shall be ten (10) years (the "Term"), commencing on the later of the respective dates of execution by Landlord and Tenant, as shown on the signature page hereof (the "Commencement Date") and ending at 11:59 p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary of the Commencement Date (the "Termination Date").

B. From and after the Commencement Date through the term of this Lease, Landlord agrees that it will not market, sell, convey, lease, encumber, option or grant any rights in favor of any third party with respect to the Property, without first obtaining the written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion. In addition, during such

period Landlord agrees not to develop or allow any third party to develop all or any part of the Property for any purpose whatsoever. The parties acknowledge and agree that part of the consideration for Tenant's agreement to select the Property and for Tenant to enter into this Lease is the agreement by the Landlord to restrict the sale or development of the Phase IV Land.

3. RENT.

Beginning on the Commencement Date and on each one (1) year anniversary thereafter during the term of this Lease, Tenant shall pay to Landlord annual rent equal to the sum of One Dollar (\$1.00). Rent shall be paid to Landlord at 308 Fountain Circle, Post Office Box 308, Huntsville, Alabama 35804-0308, Attention: Peter Joffrion. Tenant shall have the option from time to time to prepay some or all of the annual rent to accrue during the Term. The amounts payable under this Lease by Tenant pursuant to this Section 3 are sometimes referred to as the "Rent".

4. CONSTRUCTION AND OWNERSHIP OF THE PHASE IV PROJECT.

A. During the term of this Lease, Tenant shall have the absolute right, but not the obligation, at any time and from time to time, at Tenant's expense, to: (i) remove and/or demolish, in whole or in part, any and all roads, utility infrastructure, buildings and improvements, and any and all fixtures and equipment now attached or appurtenant thereto, which are located on the Property, if any (the foregoing being, collectively, the "Existing Improvements"); (ii) construct, erect or install new buildings and improvements on all or any part of the Property, and thereafter remove and/or demolish, in whole or in part, the same, including any and all fixtures and equipment attached or appurtenant thereto; (iii) alter, modify, repair, relocate, restore, reconstruct, replace or add to any buildings and improvements now or hereafter located on the Property; (iv) modify, alter or change the contour, grade or condition of the Property, or any part thereof; (v) remove, relocate or replace all of the foregoing, any vegetation or wildlife now or hereafter located on the Property, or any part thereof, or all of the foregoing; and (vi) construct and install railroad tracks, switches and lines, roadways, driveways, parking areas, poles, conduits, tunnels, pipelines, wells, septic areas, tunnels, and/or lines for telephone, electricity, water, gas, sanitary and/or storm sewers and for other utilities and municipal and special district services, and any and all other improvements and facilities which Tenant deems necessary or desirable for the construction, operation or maintenance of the Phase IV Project. Further, Tenant shall have the absolute right, but not the obligation, at any time and from time to time to cause one or more of Tenant's vendors or contractors to perform any of all of the activities described in subparagraphs (i) through (vi) above.

B. At all times and from time to time, excluding work performed by Tenant or Tenant's affiliates or agents on the Premises, Landlord shall keep the Premises free and clear of all liens, charges, interest and encumbrances resulting from the performance of any and all work performed by or at the request of Landlord or any of its affiliates or agents or the furnishing of materials to, upon or in any way affecting the Premises. Upon the performance of any work or the furnishing of any material or services to or in any way affecting the Premises by Landlord, Landlord shall provide to

Tenant, upon Tenant's request therefor, evidence satisfactory to Tenant of the full and final payment for all work, material and service provided to, upon or in any way affecting the Premises.

C. Title to any and all Improvements now or at any time hereafter located or placed upon, in or under the Premises, or any part thereof, shall, at all times during the term of this Lease, be and remain vested in Tenant. Landlord will have no right, title, or interest in the Improvements or other improvements on the Property.

D. Without limiting the Purchase Option, Tenant may construct a roadway (including curb and gutter) to the Phase IV manufacturing facility (the "Access Road"), over and across the Property in an area to be determined by Tenant in its sole discretion (the "Access Road Area"). Throughout the term of this Lease, Tenant shall maintain the Access Road at its expense and shall have full control over and exclusive use of the Access Road and Access Road Area. Landlord shall not allow any vehicular, pedestrian or other access onto or off of the Access Road without the Tenant's prior written consent, which consent may be withheld in Tenant's sole and absolute discretion. Tenant may, from time to time in its discretion, place fencing and/or access controls around or across the Access Road Area. Tenant shall have the right to place signage on and around the Access Road Area designating the Access Road as a private road, to control all activities thereon, to remove or have removed trespassers or other unauthorized users of the Access Road, and to otherwise exercise any and all property rights relating to the Access Road Area and the Access Road. The rights and obligations created hereby shall survive the termination of this Lease in the event Tenant has been granted the Easement or has exercised the Purchase Option (defined herein).

## **5 REQUIREMENTS UPON EXECUTION.**

A. Prior to the date hereof, Landlord has delivered to Tenant, at Landlord's sole cost and expense, a commitment (the "Leasehold Title Commitment") issued by title insurance company selected by Tenant (the "Title Insurer") for an ALTA Leasehold Owner's Policy of Title Insurance in form acceptable to Tenant (the "Leasehold Title Policy"), which Leasehold Title Policy shall (i) be in the amount of up to \$2,830,000,000; (ii) show Landlord as the sole owner of good marketable fee simple title, and Tenant as the owner of a leasehold interest in and to, the Property and any other Appurtenant Rights identified by Tenant to Landlord, subject only to the Permitted Exceptions; (iii) insure the interest of Tenant in and to the Property under this Lease; (iv) provide for extended coverage over general exceptions numbers 1 through 5 contained in the general form of such title policies; (v) insure with the endorsements identified on Exhibit C attached hereto and made a part hereof: (a) unrestricted access to and from the Property; and (b) the other matters set forth in Exhibit C; and (vi) contain mineral rights coverage. Contemporaneously with the execution of this Lease, Landlord shall cause the Title Insurer to issue the Leasehold Title Policy to Tenant. The fact that a matter is a Permitted Exception does not constitute a waiver or acceptance of such circumstance for any purpose other than title. Landlord hereby agrees to pay the relevant title company all of its fees and premiums attributable to the searches and the issuance of all title policies covering the Phase IV Land (including the owner's policy if Tenant or Toyota elects to purchase the land), together with the cost of any endorsements required by Tenant or Toyota

B. (1) If the Leasehold Title Commitment discloses unpermitted exceptions, Landlord shall have thirty (30) days from the date of delivery thereof to have the unpermitted exceptions removed from the commitment or to have the Title Insurer commit, in substance and manner as approved by Tenant, to insure against loss or damage that may be occasioned by such unpermitted exceptions, provided that if Landlord fails to have the unpermitted exceptions removed or in the alternative, to obtain the commitment for title insurance specified above as to such unpermitted exceptions within the specified time. Tenant may terminate this Lease or may elect within thirty (30) days after the expiration of the aforesaid 30-day period, to lease the Premises subject to such unpermitted exceptions, in which event, at Tenant's option, Tenant shall have the right to apply against all sums due hereunder or due to Landlord under any other agreement or circumstance the cost required by the Title Insurer to issue a waiver on the Leasehold Title Policy of such unpermitted exceptions or the premium payable upon a surety bond required by the Title Insurer to issue its title policy insuring over such unpermitted exceptions as aforesaid.

(2) Landlord shall reimburse such cost and premium to Tenant upon demand. Further, Landlord hereby indemnifies and holds harmless Tenant, its successors and assigns from and against any loss, cost or expense, including attorney's fees, incurred by any of them in causing the Title Insurer to issue the Leasehold Title Policy free and clear of such unpermitted exceptions.

C. Contemporaneously with the execution of this Lease, Landlord shall deliver to Tenant the opinion of Landlord's counsel, in the form and substance acceptable to Tenant and Tenant's counsel, that this Lease and all of the documents delivered by Landlord to Tenant at or in connection with the Lease were duly authorized, executed and delivered and are enforceable in accordance with their respective terms (subject to bankruptcy laws), that Landlord is duly organized, validly existing, in good standing, qualified to do business and has the power, authority and legal right to enter into this Lease and perform its obligations hereunder, and that said counsel has no knowledge or belief that any representation or warranty made by Landlord in this Lease or in any document delivered in connection with the Lease by Landlord to Tenant is untrue in whole or in part.

D. Contemporaneously with the execution of this Lease, Landlord shall deliver to Tenant, in the form and substance acceptable to Tenant and Tenant's counsel, an opinion letter of the attorney for the City that the Resolutions of the City, attached hereto as Exhibit D, guaranteeing Landlord's performance under this Lease were duly authorized, executed and delivered and create a binding, enforceable obligation of the City to guaranty the payment and performance of all obligations of the Landlord under this Lease.

6 USE OF THE PREMISES; COMPLIANCE WITH LAWS; CERTAIN RIGHTS AND RESPONSIBILITIES.

A. Tenant may at all times during the term of the Lease (i) use and occupy, and permit the use and occupancy of, the Property for any lawful purpose, including without limitation the construction, maintenance and operation of the Phase IV Project; and (ii) construct, alter, modify, demolish, remove, relocate, reconstruct, add to or otherwise deal with the Improvements at any time located on the Property.

B. Landlord shall promptly notify Tenant of Landlord's receipt of any governmental notice with respect to the Property or the Appurtenant Rights, including any notice of violation of any law, code or ordinance. Tenant shall have the right to contest by appropriate judicial or administrative proceedings the validity or application of any law, ordinance, order, rule, regulation or requirement requiring the repair, maintenance, alteration or replacement of the improvements, in whole or in part. Landlord shall, at Tenant's request, join in any such contest.

C. Landlord will consult with Tenant on all regulatory, administrative, contractual and judicial issues affecting the Property or Appurtenant Rights of any part thereof. Landlord shall not enter into or cooperate with any action, whether regulatory, administrative, contractual or judicial, that would affect the Property or Appurtenant Rights or any portion thereof without in each case the prior written consent of Tenant.

D. Landlord hereby irrevocably grants Tenant the absolute and exclusive right, power and authority from time to time, at Tenant's expense, to (i) enter into agreements restricting the use of the Property and other Appurtenant Rights or any part thereof; (ii) grant rights of way, easements and licenses over, across, along, under, in and through the Property or any part thereof (including but not limited to the absolute right, power and authority to grant to public entities or public service corporations, rights of way, easements and licenses in, on, across, along, over, under and through the Property for any purpose deemed necessary or desirable by Tenant in connection with Tenant's use, enjoyment and development of the Phase IV Project, including without limitation, railroad tracks, switches and lines, poles, conduits, tunnels and/or lines for telephone, electricity, water, gas, sanitary and/or storm sewers and for other utilities and municipal and/or special district services, for the purpose of serving the Property); and (iii) apply for and obtain zoning changes and conditional use permits, as Tenant deems desirable; and any of the foregoing instruments or interests Landlord executes or purports to create without Tenant's written consent shall be invalid. Landlord shall, at Tenant's request, join with Tenant in applications and proceedings to obtain necessary or desirable governmental permits, approvals and certifications, and use and zoning changes and join in any grant of easements or licenses over, across, under, along, in and through the Property and any other agreements Tenant deems necessary or desirable.

E. At all times during the term of this Lease, the following rights and responsibilities shall pertain:

(1) Landlord shall refer to Tenant without charge any inquiry made or interest expressed in connection with the purchase, licensing or leasing of the Property, the Appurtenant Rights, or any part thereof;

(2) Landlord shall take all actions necessary to prevent or terminate, as the case may be, any adverse or possessory claim or right to the Property, the Improvements or Appurtenant Rights or circumstance on which such claim or right can with the passage of time or otherwise be based, to begin, continue or mature, unless such claim or right is a Permitted Exception;

(3) Landlord shall immediately terminate any service contract of Landlord's which Tenant requests terminated so that Tenant and the Property, the Improvements and the Appurtenant Rights will have no liability with respect thereto;

(4) Landlord shall not modify, terminate, amend, assign or permit to lapse any agreement or instrument by which any of the Appurtenant Rights arise or which benefits the Property or any warranty, guaranty or right under contract, license, permit, privilege, franchise or concession used in connection with the Property, the Improvements or the Appurtenant Rights, including the contract and other documents pursuant to which Landlord acquired the Property (the "Purchase Documents");

(5) Any right, estate or interest in the Property, the Improvements or the Appurtenant Rights which Landlord attempts or purports to create shall be void and of no force or effect unless the prior written consent of Tenant is obtained;

(6) In no event may Landlord dump material or waste or place fill on the Property or any area affected by any Appurtenant Right, nor may Landlord grant to others the right to do so;

(7) Landlord shall not grant any option or right of first refusal or right of first opportunity to purchase the Property, the Improvements or the Appurtenant Rights or any part thereof, except to Tenant;

(8) If Landlord is notified that the Property, the Improvements or any area affected by any Appurtenant Right or any portion thereof is to be inspected by any government authority, Landlord shall immediately notify Tenant; and

## **7 REPAIR OF THE PHASE IV PROJECT.**

A. In the event of damage to or destruction of any of Improvements now or hereafter located upon the Property, by fire or other casualty, Tenant shall have the right, but no obligation, to repair, replace, restore or rebuild, at Tenant's own expense, any such Improvements so damaged or destroyed to the extent that Tenant shall deem necessary or desirable in connection with the requirements of Tenant's business. Upon the damage or destruction of any part of the Improvements which Tenant in its sole and absolute discretion deems to be significant, Tenant shall have the right to terminate this Lease upon giving Landlord written notice of such intent not later than 360 days after the occurrence of said damage or destruction.

B. The damage to or destruction of any Improvement which does not result in the termination of this Lease by Tenant shall not release Tenant from any obligation hereunder.

## **8 CONDEMNATION.**

If all or any part of the Property or Project shall be taken or condemned for any public or quasi-public use or purpose by any competent authority under any statute, or by right of eminent

domain, or by private purchase in lieu thereof, then Tenant shall have the right, in Tenant's sole and absolute discretion, to terminate this Lease by giving written notice to Landlord of Tenant's intent to terminate not later than 180 days after possession of that portion of the Property so taken has been taken or surrendered. Landlord shall promptly notify Tenant of Landlord's receipt of any notice of intent to exercise the police power or any similar notice, or the institution of any proceedings for the condemnation of the Property or any portion thereof Tenant shall be entitled to collect, and Landlord hereby assigns to Tenant, the proceeds of any condemnation award attributable to the Improvements situated on the Property.

## **9. TENANT'S PURCHASE OPTION.**

A. At any time during the term of this Lease, Tenant or any transferee or assignee shall have the right and option to purchase the Premises or any part thereof for the price and in the manner herein set forth (said right and option is herein referred to as the "Purchase Option"). Tenant or any transferee or assignee, as the case may be, shall exercise the Purchase Option by written notice (the "Notice") given to Landlord at any time and from time to time during the term of this Lease, but in no event later than ten (10) days prior to the date Tenant or any transferee or assignee desires the closing to occur. The Notice shall set forth the date for closing (the "Closing Date"), which shall not be earlier than ten (10) days from the date of the Notice. In the event that Tenant or any transferee or assignee elects to exercise the Purchase Option in accordance with the terms hereof, the purchase price for the Premises shall be One Dollar and No/100 Dollar (\$1.00) per tract, for an aggregate purchase price of Two and No/100 Dollars (\$2.00) (the "Purchase Price"). The Purchase Price shall be payable on the earliest to occur of (i) the Closing Date, or (ii) the Termination Date. In the event the Purchase Option set out herein has not been exercised prior to the Termination Date, such Purchase Option shall be deemed automatically exercised by Tenant on the Termination Date and the Closing Date shall be the date which is thirty (30) days after the Termination Date.

B. In the event Tenant exercises the Purchase Option, upon Tenant's request Landlord agrees to subdivide or cause to be subdivided in such manner as Tenant deems necessary and at Landlord's sole cost, the Phase IV Land, as necessary.

C. Upon payment of the Purchase Price by Tenant or any transferee or assignee, fee simple title to the Premises shall automatically vest in Tenant or its transferee or assignee subject only to the Permitted Exceptions, without the necessity of any further action from Landlord. In confirmation of said vesting, Landlord does hereby grant, convey and warrant unto Tenant fee simple title to the Property and Improvements, and Landlord does hereby assign unto Tenant all of Landlord's right, title and interest in the Appurtenant Rights; further provided, however, that Landlord shall take such other actions and execute such other documents and instructions as may be necessary or required to confirm and further evidence the conveyance to Tenant or any transferee or assignee, including without limitation, the due execution, acknowledgment where required, and delivery by Landlord to Tenant of the following documents, which execution and delivery shall be a condition precedent to Tenant's obligation to close:

(1) a duly acknowledged recordable Statutory Warranty Deed in the form of Exhibit B attached hereto and made a part hereof executed by Landlord as grantor, conveying marketable fee simple title to the Property and the Improvements to Tenant or such other person or entity as Tenant shall direct; said Statutory Warranty Deed being subject only to the Permitted Exceptions;

(2) a regular form quitclaim Bill of Sale executed by Landlord conveying to Tenant (or such person or entity as Tenant shall direct) all of such personal property on the Property;

(3) an assignment to Tenant executed by Landlord, of any of the service and construction contracts and any other agreements relating to the Property, the Improvements or the Appurtenant Rights which Tenant requests to have assigned to it;

(4) a blanket assignment and/or deed to Tenant (and/or a specific assignment if requested by Tenant) executed by Landlord, of any quitclaims, warranties, guarantees and rights under contracts, licenses, permits, franchises, privileges, telephone numbers or concessions held by Landlord, with respect to the Property, the Improvements or the Appurtenant Rights, including the Purchase Documents;

(5) completed real estate transfer declarations or exemptions of the State of Alabama and the County executed by Landlord;

(6) a duly acknowledged recordable statutory warranty deed and assignment executed by Landlord (or such personal or entities as Tenant shall direct) as grantor whereby Landlord (or such persons or entities) grants, bargains, sells and conveys to Tenant (or such person or entity as Tenant shall direct) such of the Appurtenant Rights as Tenant shall specify;

(7) a copy certified by the appropriate officers of Landlord, of corporate resolutions authorizing the execution of this Lease, the sale of the Property, Improvements and Appurtenant Rights, and the execution of each document delivered or to be delivered by Landlord in connection herewith, and Landlord's respective performance pursuant thereto, together with said official's current certificate that such resolutions have not been amended or rescinded;

(8) the opinion of Landlord's counsel, in form and substance acceptable to Tenant and Tenant's counsel, that this Lease and all of the documents delivered by Landlord at or in connection with the closing were duly authorized, executed and delivered and are enforceable in accordance with their respective terms (subject to bankruptcy laws, and excluding any indemnifications made by Landlord), that Landlord is duly organized, validly existing, in good standing, qualified to do business and has the power, authority and legal right to enter into this Lease and perform its obligations hereunder, and that said counsel has no knowledge or belief that any representations of warranty made by Landlord in this Lease or in any document delivered at or in connection with closing by Landlord to Tenant are untrue in whole or in part; and



(9) an owner's title insurance policy (the "Owner's Title Policy") issued to Tenant as owner pursuant to and in accordance with the Owner's Title Commitment described in Section 9.D. below or as otherwise required in this Agreement.

Acceptance by Tenant of any assignment or conveyance provided for in the foregoing documents shall not constitute Tenant's acceptance or assumption of any obligation.

D. In the event that Tenant or any transferee or assignee elects to exercise the Purchase Option at any time, Landlord shall, within 10 days of receipt of each Notice, at its own cost and expense, deliver to Tenant or any transferee or assignee a commitment for an ALTA Owner's Policy (Form B 1970) of Title Insurance in the amount of the total cost of the Phase IV Project (the "Owner's Title Commitment") issued by a Title Insurer acceptable to Tenant, showing fee simple title to the Property and the Improvements and title to such other of the Appurtenant Rights as Tenant shall designate to Landlord to be vested in Landlord, subject only to the Permitted Exceptions, and committing to insure title in Tenant or any transferee or assignee of Tenant upon the date set forth in the Notice for the consummation of the purchase and sale, which Owner's Title Commitment shall include the coverages set forth in Section 5.A.(iv), (v) and (vi) above. In connection with the exercise of the Purchase Option, Landlord shall pay at or prior to the closing (i) the entire cost of each such title commitment and the entire cost of the Owner's Title Policy issued pursuant thereto, (ii) the entire cost of any survey in connection therewith, and (iii) all other costs and expenses associated with any transfer pursuant to exercise of the Purchase Option, including without limitation, all recording costs and expenses and all documentary or other taxes or fees incurred in connection with such conveyance.

E. (1) If the Owner's Title Commitment discloses one or more exceptions relating to title other than the Permitted Exceptions, Landlord shall use its best efforts and due diligence to have each such unpermitted exception released or satisfied or insured over by the Title Insurer to Tenant's satisfaction. If Landlord fails to have such unpermitted exception either removed or insured over to Tenant's satisfaction and to give conclusive evidence thereof to Tenant within thirty (30) days from the date such Owner's Title Commitment was delivered to Tenant, Tenant may (i) cancel its exercise of the Purchase Option, in which event at Tenant's election the Lease shall remain in effect, or (ii) elect, upon notice to Landlord within thirty (30) days after the expiration of said 30 day period, to take title as then shown on the extent Owner's Title Commitment with the right to deduct from the purchase price the cost of causing the Title Insurer to insure over such exceptions and liens of a definite or ascertainable amount, including the premium on any surety bond required by the Title Insurer, and the right to obtain extended coverage over the general exceptions aforesaid. Landlord shall pay to Tenant on demand the amount by which the foregoing costs exceed the purchase price.

(2) Further, Landlord hereby indemnifies and holds harmless Tenant, its transferees and assigns and their respective successors from and against any loss, cost or expense, including attorneys' fees, incurred by any of them in causing the Title Insurer to issue its policy free and clear of such unpermitted exceptions. The Closing Date shall be the later of the date otherwise provided herein or ten (10) days after the acceptance or perfection of title as provided herein.

F. If for any reason, including without limitation unconstitutionality, bankruptcy or incapacity, either Landlord defaults or otherwise fails to perform under its respective obligations under this Lease or its performance shall be challenged in a court of law as ineffective, illegal, ultra vires, unconstitutional or otherwise improper, then Tenant shall have the right and option exercised by notice to Landlord to such effect, (i) to have the Purchase Option and Tenant's purchase of the Property consummated by a direct transfer from Landlord to Tenant of marketable fee simple title to the Property, Improvements, Appurtenant Rights, personal property and all other rights and interest transferable under this Section 9 on the same terms as herein provided ("Option A"); and/or (ii) to cancel its exercise of the Purchase Option in that instance without prejudice to any future right to exercise the Purchase Option; and/or (iii) to create a new right and option to extend the term of this Lease for an additional ten (10) years (the "Extension Option"); and/or (iv) to exercise such other rights and remedies as may be available to it under this Lease, at law or in equity. If it shall be judicially determined that the purchase price shall be insufficient as a matter of Alabama law to permit one or more of the effective conveyances herein provided for under the option of Option A, then before or after all applicable appeal periods shall have run, Tenant shall have the further right, at its election exercised by notice to Landlord to such effect (i) to agree to pay as a purchase price such minimum amount as shall obviate such legal impediment, (ii) to cancel its exercise of Option A in that instance without prejudice to any future right to exercise Option A, (iii) to exercise the Extension Option, and/or (iv) to exercise such other rights and remedies as may be available to it under this Lease, at law or in equity.

G. If Option A is exercised, Landlord shall cooperate with Tenant to effect the delivery of marketable fee simple title to Tenant to the Property (subject only to the Permitted Exceptions), the Improvements, the Appurtenant Rights, personal property and all other rights and interest transferable under this Section 9 on the terms as are herein contemplated. If the Extension Option is exercised, then the Lease shall be deemed amended by adding a new Section 2.C. as follows:

"C. Tenant shall have the further right and option to further extend the term of this Lease for an additional ten (10) consecutive years. Unless Tenant provides Landlord with written notice of its intent not to extend the term for said additional ten (10) year period, this Lease shall be automatically extended for an additional period of ten (10) years upon the same terms and conditions as herein contained, except that the Term shall include said ten year period and shall terminate and be rendered null and void as of 11:59 p.m. on the day immediately preceding the twentieth (20th) anniversary of the Commencement Date)."

#### 10. DELIVERY OF POSSESSION.

At the Commencement Date, actual, complete and exclusive possession of the Property shall be delivered by Landlord to Tenant free and clear of all liens, claims, charges, contracts, tights, tenancies or encumbrances of any kind or nature, other than the Permitted Exceptions. During the term of this Lease, Tenant shall have full access to the Property and the Appurtenant Rights for the purpose of constructing the Phase IV Project, and to the extent not otherwise set out in this Lease, Tenant is hereby granted such licenses, easements and rights of access by Landlord necessary to complete the construction of the Phase IV Project.

## 11. ENVIRONMENTAL COMPLIANCE AND INDEMNITY.

A. Landlord represents and warrants that to the best of Landlord's knowledge, and except as provided in any written environmental report with respect to the Property delivered to or obtained by Tenant prior to the Commencement Date, as of the Commencement Date, (i) the Property and the operation thereof are not, nor is any part thereof, under investigation with respect to, and the Property is not and has never been (and no part of the Property is or ever has been) in violation of, any Environmental Law (a such term is herein defined), nor is any such investigation or violation threatened, (ii) no proceedings have been commenced against, nor has any notice or threat been received by Landlord or any of its Related Parties (as such term is herein defined) concerning the alleged violation of any Environmental Law in respect of the Property, (iii) the Property has never been the subject of any threatened, proposed or actual cleanup or other protective, removal or remedial action relating to any Hazardous Substance (as such term is herein defined), whether pursuant to any Environmental Law or otherwise, (iv) there are no Hazardous Substances in, on, under or about the Property, (v) no release, leak, spillage, seepage, escape, leach, discharge, injection, emission, pumping, pouring, emptying, dumping, or filtration of any Hazardous Substance is occurring or has occurred in, on, under, about or from the Property, and no migration of any Hazardous Substance is occurring or has occurred from other property onto, into, in, on, under or about the Property, (vi) the Property is not being used, and the Property has never been used for any generation, manufacture, emission, refining, production, processing, treatment, storage, handling, transportation, transfer, use or disposal of any Hazardous Substance in, on, under, about or from the Property, and (vii) the Property is not listed in the United States Environmental Protection Agency's National Priorities List of Sites or any other list, schedule, log, inventory or record of Hazardous Substances or hazardous waste sites, whether maintained by the United States Government or any local agency.

B. To the maximum extent not prohibited by law, Landlord agrees to, shall and does hereby protect, indemnify and hold harmless Tenant and Tenant's Related Parties from and against, and reimbursed Tenant and Tenant's Related Parties for, each and every loss, damage, fine, penalty, cost, expense (including without limitation attorneys' fees, court costs, litigation, investigation, consulting, sampling and claim preparation expenses of all kinds and expert fees), judgment, assessment, claim, suit, proceeding, demand, liability and remedial or mitigation expense which may be imposed upon, asserted against or incurred or paid by Tenant or Tenant's Related Parties, by reason of or in connection with any of the following, including without limitation any claim or assertion (other than by Tenant) to one or more of the following effects: (i) the breach of this Lease, the breach of any covenant, representation or warranty of Landlord set forth in this Lease, or any agreement entered into pursuant hereto, or any claim or assertion (other than by Tenant) inconsistent with any such covenant, representation or warranty; (ii) any violation by Landlord or any of Landlord's Related Parties of any Law or Environmental Law; (iii) the presence of any Hazardous Substance in, on, under or about all or any part of the Property either existing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option, or attributable or related to any event or events, circumstances, release or occurrences commencing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option, or caused or permitted in whole or in part by Landlord or any of Landlord's Related Parties; (iv) any release, leak,

spillage, seepage, migration, escape, leach, discharge, injection, emptying, dumping or filtration of any Hazardous Substance Area either related or attributable to one or more events, circumstances or occurrences, excluding migration from any adjacent property owned by Tenant, commencing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option, or caused or permitted in whole or in part by Landlord or any of Landlord's Related Parties, (v) any lien, injury to person, death or damage to or destruction of property directly or indirectly, wholly or partially, due to any act or omission of Landlord or any of Landlord's Related Parties, and (vi) any Hazardous Substance migrating or emanating onto, into, under or above all or any part of the Property as a result of any condition or circumstance commencing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option on any other property, including without limitation and in addition, any Hazardous Substance present on lands in proximity to the Property, including without limitation those lands in Madison County adjacent to the Property. As used herein, "Related Parties" means each and every person, firm, corporation, trust, partnership, company, governmental or quasi-governmental body, agency, officer, authority, body politic or entity of any kind, association or other collective group or entity of any kind directly or indirectly having one or more of the following relations with Landlord or with Tenant as the context indicates, namely, employee, officer, director, trustee, board member, commissioner, chief executive officer, agent, contractor, licensee, vendor, supplier, lender, partner, attorney, subtenant, co-tenant, co-participant, shareholder, owner, successor, assign, subsidiary and instrumentally, of all tiers, so that, for example and without limitation, an employee of any agent of Tenant shall be included within Tenant's "Related Parties", as shall the agent.

C. Not later than the Commencement Date Landlord shall obtain and deliver to Tenant all necessary environmental statements and other approvals for the transactions contemplated hereby required by the City of Huntsville or any of its agencies, officials or instrumentalities (collectively, the "City"), and not later than the Commencement Date Landlord shall deliver to Tenant any and all environmental impact statements, statements of negative declaration or such other notices and statements relating to environmental matters as shall be required by the City with regard to the lease of the Property pursuant to any City law or requirement applicable thereto.

D. For purposes of this Lease, the term "Environmental Law" shall mean any federal, state or local, current or future legal requirement pertaining to (i) the protection of health, safety, and the indoor or outdoor environment, (ii) the conservation, management, or use of natural resources and wildlife, (iii) the protection or use of surface water and groundwater, (iv) the storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, and Hazardous Substance or (v) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, that Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 USC 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., Hazardous Materials Transportation Act, 49 USC App. 1801 et seq., Occupational Safety and Health Act of 1970, as

amended, 29 USC 651 et seq., Oil Pollution Act of 1990, 33 USC 2701 et seq., Emergency Planning and Community Right-To-Know Act of 1986, 42 USC 11001 et seq., National Environmental Policy Act of 1969, 42 USC 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 USC 300(f) et seq., and similar, implementing or successor law, and any amendment, rule, regulation, order, or directive issued thereunder. For purposes of this Lease, the term "Law" shall mean and refer to any law, regulation, rule, ordinance, code, order and direction, and the payment of all taxes, permits, licenses or contract conditions, assessments, fees or charges imposed or enforced or enforceable by or issued under the authority of any government or governmental entity or agency, including without limitation, all departments, commissions, boards, authorities, courts, officials and officers thereof.

E. For purposes of this Lease, the term "Hazardous Substance" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or hazardous or toxic material, and includes, without limitation, (i) asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof) and (ii) any such material classified or regulated as "hazardous" or "toxic" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., "hazardous chemical," "extremely hazardous chemical" or "toxic chemical" defined or regulated under the Emergency Planning and Community Right-To-Know Act, 42 USC 11001 et seq., any "waste," "solid waste" or "hazardous waste" defined or regulated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 USC 6901 et seq., and any chemical, pollutant or contaminant defined or regulated under the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., or Hazardous Materials Transportation Act, 49 USC App. 1801 et seq.

F. If Landlord or any of its Related Parties shall (i) receive notice that any violation of any law may have been or is threatened to be committed by Landlord or any of its Related Parties as a result of any activity concerning any Hazardous Substance, (ii) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed against Landlord or any of its Related Parties alleging any violation of any law as a result of such activity, or requiring Landlord or any of its Related Parties to take any action in connection with any such activity, or (iii) receive any notice from a federal, state or local governmental agency alleging that Landlord or any of its Related Parties may be liable or responsible for costs associated with a response to or clean-up of a release or disposal of any Hazardous Substance or any damages caused thereby, including, without limitation, any notice that Landlord, or any of its Related parties is a "potentially responsible party," as defined in CERCLA (42 U.S.C. § 9601 et seq.), Landlord shall immediately give Tenant notice of same and provide Tenant with a copy of any such notice within five (5) days after Landlord's or one of its Related Parties' receipt thereof.

G. In the event that any of the representations or warranties set forth in Section 11.A. above is breached or is otherwise untrue or rendered untrue in any respect as it pertains to any portion of the Property, or in the event that Landlord or any of its Related Parties notifies Tenant

of any of the circumstances or events set forth in Section 11.F. above, Tenant shall have the right to (i) terminate this Lease by giving written notice to Landlord, or (ii) exclude from the Premises any portion of the Property in respect of which said representation or warranty has been breached or rendered untrue or such notice pertains. In the event Tenant elects to exclude any portion of the Property from the Premises pursuant to the terms of this section, Landlord shall retain title to said portion of the Property and shall in an expeditious manner implement such remedial action and pay all costs as are necessary or required to (i) cure the breach of the representation or warranty and render it true in all respects, (ii) cure any violation of law relating to any activity concerning any Hazardous Substance, and (iii) satisfy in full all costs associated with a response to or clean-up of a release or disposal or any Hazardous Substance or any damage caused thereby, so as to effect the unconditional withdrawal of any notice identified in Section 11.F. above or dismissal of any action or proceeding relating thereto. Landlord shall not permit said portion of the Property to be subject to any lien under any Environmental Laws. Upon completion of the remediation, payment of costs and full performance of all other acts set forth in the second sentence of this Section 11.G., Landlord shall give notice to Tenant thereof, and Tenant may, at Tenant's sole and absolute discretion, elect to have said portion of the Property included within the Premises. Landlord's indemnity as set forth in Section 11.B. above shall continue in full force and effect in favor of Tenant in respect to the entire Property, notwithstanding that a portion thereof may have been excluded from the Premises.

H. Landlord shall perform, or cause to be performed, any and all remedial actions and shall pay all costs and expenses related thereto (including without limitation, costs of investigation and technical consultants) necessary to deliver the Premises to Tenant in full compliance with all Environmental Laws and will take such further actions as may be required to be taken in the future to fully investigate, remediate and clean up any and all environmental contamination or pollution existing on the Commencement Date so as to render the Premises in full compliance with all Environmental Laws. All such remediation shall be conducted by Landlord in such a manner as will not interfere in any way with the operation of the Phase IV Project.

I. Sections 11.A. through 11.I. shall survive the exercise of the Purchase Option, the closing pursuant thereto, the delivery and recording of the deed, the subleasing of the Property or any portion thereof, the assignment, expiration or termination of the Lease and all other events, without termination or diminution.

J. Landlord hereby approves the issuance of pollution control bonds, if requested by Tenant in its sole discretion, and the debt instruments of Tenant, if any, and agrees to take all actions necessary to issue pollution control bonds and to execute all documents necessary in connection therewith.

## 12 TAXES.

Landlord shall pay when due all real property, ad valorem or other taxes or assessments (collectively, "Taxes") accruing on or before the Commencement Date, and Tenant shall pay all Taxes accruing after such date and prior to the expiration or earlier termination of this Lease for

which no exception is granted. Landlord shall promptly notify Tenant of any proposed change in any Tax which could in any manner affect Tenant, the property or improvements. Tenant shall have the right to contest any such change. If any tax bill shall include both the Property and other property, Landlord shall cause the portion thereof allocable to the other property to be timely paid to the taxing authorities or to Tenant.

### **13. LEASEHOLD MORTGAGE.**

A. Tenant shall have the right, at any time, and from time to time during the term of this Lease, upon notice to the Landlord, to subject Tenant's leasehold estate and title to any or all buildings or improvements now, or at any time hereafter, located or placed on the Premises, to a "Leasehold Mortgage" (as such term is herein defined), without Landlord's consent. If either Tenant or the mortgagee under the Leasehold Mortgage shall give notice to Landlord of the existence thereof and the address of such mortgagee, such mortgagee shall become a "Leasehold Mortgagee" for the purposes of this Lease (which term shall include the successors and assigns of any Leasehold Mortgagee, and, where the context warrants, any person, entity or authority that acquires Tenant's interest in this Lease or the Phase IV Project or both, in connection with any foreclosure, assignment in lieu of foreclosure or other proceedings to enforce any Leasehold Mortgage). The provisions of this section are for the benefit of each Leasehold Mortgagee and shall be enforceable by each Leasehold Mortgagee.

B. The term "Leasehold Mortgage" as used herein include (i) any mortgage, deed of trust, assignment in trust, deed or assignment to secure a debt conditional or collateral assignment or security instrument by which Tenant's interest in this Lease or the Phase IV Project, or both, is mortgaged, conveyed, assigned, pledged, hypothecated or otherwise transferred to secure a debt or other obligation, and (ii) any other agreement or instrument by which any other type of financing arrangement (including without limitation, a pledge of stock, partnership interests or other ownership interests or such partnership arrangements as shall be employed for the purpose of financing or as security therefor) is secured or evidenced.

C. The term "Leasehold Mortgage" shall include (i) the holder or beneficiary of any Leasehold Mortgage, (ii) the holder or beneficiary of any such other agreement or instrument by which such other type of financing arrangement is evidenced or secured, as the case may be, and (iii) in each case, any assignee of any holder or beneficiary to which such interest has been assigned.

D. If Tenant defaults in the performance of its covenants and obligations under any Leasehold Mortgage, and the Leasehold Mortgagee thereunder acquires Tenant's leasehold estate and title to any or all of the buildings and other improvements, whether pursuant to power of sale, by judicial foreclosure or by an assignment in lieu of foreclosure, Landlord agrees to waive all past defaults occurring prior to the date the Leasehold Mortgagee acquires title to such estate or interest.

E. Landlord expressly acknowledges and agrees that no Leasehold Mortgagee shall be responsible or liable, in any way, for the subleasing of all, or any part, of the Premises, or for the

collectability, collection or non-collection of any rent or other income from the operation of the Project, nor shall any Leasehold Mortgagee be required to make an accounting to or for the benefit of Landlord, Landlord hereby expressly waiving, and releasing any and all such Leasehold Mortgagees from any such responsibility or liability.

F. If Tenant shall elect to subject its leasehold estate and title to any or all of the buildings or other improvements now, or at any time hereafter, located or placed upon the Premises to any Leasehold Mortgage, and thereafter, Tenant defaults in the payment of any Rent or the performance of any covenant under this Lease, then Landlord shall promptly give to any and all said Leasehold Mortgagees, written notice of such default and the Leasehold Mortgagee shall, at its option and upon written notice thereof given to Landlord within 180 days after the expiration of any grace or curative period permitted to Tenant under this Lease in respect to such default, have the right:

(1) to cure or correct such default within 180 days after the expiration of any such grace or curative period so permitted to Tenant or within such additional period of time as may be necessary or required to correct or cure such default, but only if the Leasehold Mortgagee commences to eliminate the cause of such default within said 180 days and proceeds diligently and with reasonable dispatch to take all steps and do all work to correct or cure such default; or

(2) to cause the initiation of foreclosure proceedings (if Leasehold Mortgagee does not elect to cure or correct such default, or such default cannot be cured or corrected) within 180 days after the expiration of any such grace or curative period so permitted to Tenant, to prosecute such proceedings diligently to conclusion and to perform and comply with all other covenants and conditions of this Lease until the leasehold estate and title to any or all buildings or other improvements shall be released or reconveyed from the Leasehold Mortgage or until the leasehold estate and title to any or all of the buildings or other improvements shall be transferred or assigned pursuant to or in lieu of foreclosure or the exercise of the power of sale; or

(3) to purchase from Landlord all of Landlord's right, title and interest in, to and under the Property, the Improvements and the Appurtenant Rights pursuant to the Purchase Option described in Section 9 of this Lease, at the price set forth therein, in which case the purchase shall be consummated within thirty (30) days after the Leasehold Mortgagee has provided Landlord with written notice of said election and Landlord shall convey to the Leasehold Mortgagee, or its nominee, all of Landlord's right, title and interest in, to and under the Property, the Improvements and the Appurtenant Rights, by Statutory Warranty Deed in the form of Exhibit B attached hereto, subject only to (i) the Permitted Exceptions, (ii) this Lease and (iii) the rights of Tenant hereunder and all acts done or suffered by, through or under Tenant.

G. If any Leasehold Mortgagee shall elect to exercise the right granted pursuant to Section 12.F.(2) or 12.F.(3) above, then Landlord shall not institute any suit, action or other proceeding to enforce the rights and remedies conferred upon Landlord under this Lease pending the conclusion of the foreclosure proceedings or the purchase, whichever is the case.



H. No Leasehold Mortgagee shall be liable for the performance of Tenant's covenants, agreements and obligations under this Lease until such Leasehold Mortgagee acquires Tenant's interest in the leasehold estate by foreclosure or otherwise. No Leasehold Mortgagee shall be required to cure or correct any of Tenant's defaults under this Lease occurring or existing prior to the acquisition by such Leasehold Mortgagee of Tenant's leasehold estate, and its rights and interests under this Lease, by foreclosure or otherwise.

I. In the event that any Leasehold Mortgagee shall acquire Tenant's leasehold estate, by reason of foreclosure or otherwise, then, in such event, Landlord shall enter into a new lease with such Leasehold Mortgagee covering the Premises, provided that such Leasehold Mortgagee shall, in writing, request such new lease within thirty (30) days after such acquisition. The new lease shall be for a term commencing on the date of acquisition and terminating on the date this Lease would have expired but for the acquisition, and otherwise shall be upon the same covenants, agreements, conditions, including any termination and purchase options herein contained.

#### 14. ENCUMBRANCES BY LANDLORD.

A. Landlord represents and warrants that as of the Commencement Date, the Property and the Appurtenant Rights are free and clear of all contractual liens, security interest, mortgages and encumbrances.

B. During the term of this Lease, Landlord shall not grant, give or permit, or allow or suffer any mortgage, deed of trust, assignment in trust, deed or assignment to secure a debt, conditional or collateral assignment or security instrument by which Landlord's interest in this Lease or the Property or the Improvements or the Appurtenant Rights or all of the foregoing, is mortgaged, conveyed, assigned, pledged, hypothecated or otherwise transferred to secure a debt or other obligation.

#### 15. UTILITIES.

Tenant shall pay all charges for water, gas, electricity, power, and all other utility services which may be delivered to the Premises and consumed by Tenant during the term of this Lease. Landlord acknowledges and agrees that nothing herein contained shall be deemed to release, modify or affect in any manner any obligation to pay for and/or provide utility services set forth in any other separate agreement.

#### 16. QUIET ENJOYMENT.

Landlord hereby represents and warrants to, and covenants with, Tenant that Landlord is well seized of, and has good title to, the Premises, subject only to the Permitted Exceptions and has all requisite power and authority to enter into this Lease. Landlord covenants that Tenant shall have the peaceful use and quiet enjoyment of the Premises during the term of this Lease, without hindrance on the part of Landlord, and that Landlord will warrant and defend the lawful claims of all persons claiming by, through or under Landlord, and will indemnify Tenant against any and all loss, damage and expense Tenant may suffer, incur or sustain by virtue of any such claim, or any

lien, encumbrance, restriction or defect in title to or description of the Premises, during the term of this Lease.

## 17. INDEMNIFICATION.

A. To the maximum extent permitted by law, Landlord agrees to, shall and does hereby protect, indemnify and hold harmless Tenant and Tenant's Related Parties from and against, and reimburses Tenant and Tenant's Related Parties for, each and every loss, damage, fine penalty, cost expense (including without limitation attorney's fees, court costs, litigation, investigation, consulting, sampling and claim preparation expenses of all kinds and expert fees), judgment, assessment, claim, suit, proceeding, demand, liability and remedial or mitigation expense which may be imposed upon, asserted against or incurred or paid by Tenant or Tenant's Related Parties, by reason of or in connection with any of the following, including without limitation any claim or assertion (other than by Tenant) to one or more of the following effects: (i) any accident or injury to or death of any persons, or loss of or damage to property occurring upon or around the Property, or any part thereof, caused by any act of Landlord or any of Landlord's Related Parties or otherwise in connection with the performance of Landlord's obligations by parties other than Tenant, or (ii) the performance of any labor or services, or the furnishing of any materials or property in connection with the construction, maintenance, repair or relocation of the Improvements being constructed upon the Property by or for Landlord; or (iii) any use, non-use, possession, occupation, repair, alteration, condition, operation or maintenance of the Property by Landlord, or any of Landlord's Related Parties, or (iv) any act or negligence on the part of Landlord or on the part of anybody claiming an interest in the Property or the Improvements or any other Appurtenant Right or any part thereof or any appurtenances thereto under or through Landlord or its Related Parties (other than Tenant or its Related Parties), or (v) any failure on the part of Landlord to keep, observe, perform or comply with any of the other terms, covenants, agreements or conditions contained in this Lease or in any other agreement affecting the Property, on Landlord's part to be kept, observed, performed or complied with, or any inaccuracy in any representation or warranty made by Landlord in this Lease, except for any obligation of the County under the Project Diamond Agreement. This Section 17.A. shall survive the exercise of the Purchase Option, the closing pursuant thereto, the delivery and recording of the deed, the subleasing of the Property or any portion thereof, the assignment, expiration or termination of the Lease and all other events, without termination or diminution.

B. Except as otherwise provided in Sections 11.B. and 17.A. hereof, Tenant will indemnify and hold harmless, Landlord from and against all liabilities, obligations, claims, damages, costs and expenses imposed upon or incurred by or asserted against Landlord by reason of any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property or any part thereof as a result of the operation of the Phase IV Project during the term of this Lease, excluding any of the foregoing resulting from or contributed to by the act or omission of Landlord or any of Landlord's Related Parties. In case any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant will, at Tenant's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended.

C. At all times during the term of this Lease, Landlord, Landlord's Related Parties and any other person or entity who performs an obligation or work on Landlord's behalf shall be

required to conform and adhere to all of Tenant's rules and regulations with respect to the Phase IV Project, including but not limited to Tenant's construction site rules and regulations.

**18. ASSIGNMENT AND SUBLETTING.**

A. Tenant shall have the absolute right to assign or otherwise transfer Tenant's interest in this Lease and the leasehold estate hereby created to:

(1) any Leasehold Mortgagee in lieu of the exercise of the power of sale or of foreclosure;

(2) any subsidiary, affiliate or successor of Tenant; or

(3) any corporation resulting from the merger, reorganization or consolidation of Tenant, or any corporation, entity or person acquiring all or substantially all of the property and assets owned and used by Tenant in the operation of the Phase IV Project.

B. For purposes of this Section, the following terms shall have the following meanings:

(1) The term "affiliate" shall mean and refer to any corporation which, directly or indirectly, controls or is controlled by or is under common control with Tenant. For this purpose, "control" shall mean the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

(2) The term "subsidiary" shall mean and refer to any corporation not less than fifty percent (50%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Tenant.

(3) The term "successor" shall mean and refer to:

(a) any corporation into or with which Tenant, its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation, the liabilities of the corporations participating in such merger or consolidation are assumed by the corporation surviving such merger or created by such consolidation; or

(b) any corporation acquiring this Lease and a substantial portion of the property and assets of Tenant, its corporate successors or assigns.

C. Upon the assignment or other transfer of Tenant's interest in this Lease and the leasehold estate created hereby, in accordance with Section 18.A., Tenant shall be discharged from any and all further liability and obligation under this Lease.

D. Tenant shall have the absolute right to sublet all or any portion of the Premises or the improvements now or hereafter located thereon, or both, and to assign, encumber, extend, or renew any sublease, provided that:

(1) Each sublease shall contain a provision requiring subtenant to attorn, upon request, to Landlord or, in the event of any proceeding to foreclose any Leasehold Mortgage, to the Leasehold Mortgagee, or any person designated in a notice from the Leasehold Mortgagee, if Tenant defaults under this Lease and if the subtenant is notified of Tenant's default and instructed to make subtenant's rental payment to Landlord or the Leasehold Mortgagee or such other designated person; and

(2) Tenant shall promptly after execution of the sublease, notify Landlord of the name and address of the subtenant.

## 19. SURRENDER.

A. Upon the termination of this Lease by lapse of time or otherwise and within 180 days thereafter, Tenant shall have the right to:

(1) abandon any and all buildings and other improvements, together with all fixtures and equipment attached or appurtenant thereto, then located upon the Premises, in which case any and all such buildings and other improvements shall then become the property of Landlord free and clear of any interest of Tenant; or

(2) (a) remove any and all such buildings and other improvements, together with all fixtures and equipment attached to or appurtenant thereto from the Premises;

(b) conduct an auction, liquidation or other sale of any of the foregoing;  
and

(c) exercise the Purchase Option pursuant to Section 9 hereof.

B. In the event that Tenant elects not to exercise the Purchase Option pursuant to Section 9 hereof, Tenant shall, at the termination of the term of this Lease, by lapse of time or otherwise and subject to the rights of survival set forth in Section 19.A., yield up immediate possession of the Premises to Landlord. It is the express understanding of Landlord and Tenant that Tenant shall not be obligated to restore the Premises to the condition as existed at the Commencement Date. Tenant shall not be obligated to remove any utility services installed over, upon or across the Premises at the direction of Tenant, or any streets, roadways, parking lots, railroad tracks, switches or other improvement or change any other physical aspect of the Premises upon the vacation of the Premises by Tenant. Upon vacation of the Premises by Tenant at the termination of this Lease, ownership of the buildings and other Improvements remaining on the Premises shall vest in Landlord.

## 20. INSURANCE.

A. At all times during the term of this Lease, Tenant shall carry and keep in force all insurance required to be maintained by applicable state and federal law and such other insurance as it deems necessary to cover any and all liabilities which may occur by reason of its occupancy of the Premises. Tenant shall cause its insurers to name Landlord as an additional insured on any policy of liability insurance maintained by Tenant.

B. Upon written request by Tenant from time to time, and at Tenant's expense, Landlord shall provide and maintain during the term of this Lease for the mutual benefit of Landlord and Tenant, a policy or policies of comprehensive general public liability insurance, including contractual liability, with minimum limits of no less than \$3,000,000.00 with respect to injury or death to any one person, \$5,000,000.00 with respect to any one occurrence, and \$2,000,000.00 with respect to property damage arising out of any one occurrence, which policy or policies shall:

(1) Name as additional insureds Tenant and Tenant's officers, directors, shareholders, agents, and employees, and such other persons as Landlord may designate;

(2) Be written by solvent and responsible insurance companies acceptable to Tenant;

(3) Provide that such policy or policies may not be canceled by the insurer without first giving Tenant at least thirty (30) days prior written notice;

(4) Protect and insure Landlord and Tenant on account of any loss or damage arising from (i) injury or death to persons or damage or destruction to property caused by or related to (a) any demolition, construction or reconstruction that Landlord may perform or may have performed in connection with the Property; or (b) any act or omission of Landlord or any of Landlord's Related Parties on any portion of the Property; and (ii) any breach of Landlord's indemnities under this Lease;

and Landlord shall deliver certificates (using Form ACORD 27) or memoranda (in form and substance satisfactory to Tenant) of such policies of insurance to Tenant; provided that in the event Landlord shall fail to provide and maintain such insurance, Tenant may, but shall not be obligated to, in addition to any other remedies provided for herein, cause such insurance to be issued covering Tenant, its officers, agents and employees and Tenant shall have the right to deduct the premiums for the same from the rent or other charges due or payable to Landlord hereunder or under any other agreement until Tenant has been fully reimbursed therefore; at Tenant's election, Landlord shall reimburse Tenant for the payment of premiums. Every ten (10) years of the Term, commencing on the tenth (10<sup>th</sup>) anniversary of the Commencement Date, the minimum insurance limits specified in this Section 20 shall double.

## **21. DEFAULT AND REMEDIES.**

A. If any one or more of the following events (herein sometimes called "Events of Default") shall occur:

(1) if the Landlord shall default in the due and punctual payment of any amounts payable under this Lease when and as the same shall become due and payable, and such default shall continue for a period of thirty (30) days after written notice of default from Tenant to Landlord; or

(2) if default shall be named by Landlord in the performance of or compliance with any of the covenants, agreements, terms or provisions contained in this Lease, other than those referred to in the foregoing subsection (1), and such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord; or

(3) if Landlord or any Guarantor shall file a voluntary petition of bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, liquidator or similar official of Landlord or any Guarantor or of all or any substantial part of its properties or of the Premises or the interest of Landlord therein; or

(4) if within ninety (90) days after the commencement of any proceeding against Landlord or any Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Landlord or any Guarantor, of any custodian, trustee, receiver, liquidator or similar official of Landlord or any Guarantor or of all or any substantial part of its properties or of the Premises or the interest of Landlord therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not have been vacated; or

(5) if the Premises shall become subject to (i) any tax lien or (ii) any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's lien or materialmen's lien or other lien of any nature whatsoever arising as a consequence of Landlord's failure to pay for any work or materials supplied at Landlord's request in connection with the Premises and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Tenant by the title company insuring the interest of Tenant under this Lease within thirty (30) days after the same is filed or recorded, irrespective of whether the same is superior or subordinate in lien or other priority to the interest of Tenant hereunder and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Premises or is only a matter of record or notice; or

(6) if any part of the Premises is (i) annexed by any municipal authority without the express written approval of Tenant, and/or (ii) taken by condemnation, requisition or otherwise; or

(7) if Tenant's full use and enjoyment of the Premises or any part thereof is prohibited, restricted, limited or subject to interference in any way; or

(8) if any Guarantor shall default in the due and punctual payment of any amounts as and when the same shall become due and payable;

then, Tenant shall have the right, but not the obligation, and without further notice to Landlord, to (i) cure or correct such default and if, in connection therewith, Tenant shall incur, suffer or sustain any cost or expense (including, without limitation, attorneys' fees and expenses), then Landlord shall upon demand, reimburse Tenant for all such costs and expenses together with interest thereon at the rate which is the lesser of (i) the highest legal rate or (ii) twelve percent (12%) per annum, or (iii) terminate this Lease and render it of no further force and effect, and in connection therewith Tenant shall be entitled to collect from Landlord an amount equal to the aggregate costs incurred by Tenant or its vendors or contractors in connection with the Phase IV Project (the aggregate of all such costs being herein referred to as the "Project Costs"), plus an amount equal to the sum of fifty percent (50%) of the Phase IV Project Costs, as liquidated damages and not as a penalty, and as a reasonable estimate of actual additional damages that would be incurred by Tenant, the calculation of such actual damages being difficult and imprecise, or (iv) terminate any agreement with Landlord and render them of no further force and effect and, in connection therewith, Tenant shall be entitled to collect from Landlord, the Phase IV Project Costs, plus an amount equal to the sum of fifty percent (50%) of the Phase IV Project Costs, as liquidated damages and not as a penalty. The parties agree that because of the inconvenience and difficulty of ascertaining actual damages beyond Project Costs for a default by Landlord, the liquidated damages set forth above are a reasonable estimate of actual damages under the circumstances. Any amounts owed from Landlord to Tenant pursuant to the terms of this section which are outstanding at the time of any exercise by Tenant of the Purchase Option set forth in Section 9 hereof, may at Tenant's election, be applied as a credit against the purchase price to be paid pursuant to said Purchase Option. In addition to the aforesaid right, Tenant shall have all other rights and remedies available to it at law or in equity, including the right to enforce specific performance of the Purchase Option. Nothing in this Lease contained shall be construed to effect a novation and, except as expressly provided in this Lease, any other agreement with Landlord shall not be deemed to have been modified, amended, canceled, terminated, released, satisfied, superseded or otherwise rendered of no force and effect.

B. Each right, power and remedy conferred upon the Tenant by this Lease is in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law or in equity or any other agreement with Landlord, and upon the occurrence of a default by Landlord, each such right, power and remedy herein or therein set forth or otherwise existing may be exercise singly, successively, cumulatively or in any combination, at any time, and from time to time as often and in such order and manner as may be deemed expedient by Tenant; and the exercise or the beginning of the exercise of any right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, Tenant in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any event of default or acquiescence therein.

C. Upon the expiration or termination of this Lease by Tenant as aforesaid any payment of the amounts owed by Landlord to Tenant hereunder, Tenant shall quit and peacefully surrender the Premises to Landlord; provided, however, in no event shall Tenant have the obligation to remove any improvements or otherwise restore the Premises to the condition that existed prior to the date hereof

D. In the event that Tenant shall default in the performance and/or observance of any of Tenant's covenants, agreements, conditions and obligations contained in this Lease, and thereafter fails to cure or correct such default within 180 days after receipt of written notice thereof from Landlord, then Landlord shall have the right, but not the obligation, upon notice to Tenant, to cure or correct such default and if, in connection therewith, Landlord shall incur, suffer or sustain any cost or expense (including, without limitation, attorneys' fees and expenses), then Tenant shall upon demand, reimburse Landlord for all such cost and expense, together with interest thereon at the rate which is the lesser of (i) the highest legal rate or (ii) six percent (6%) per annum. Any amounts owed from Tenant to Landlord pursuant to the terms of this section which are outstanding at the time of any exercise by Tenant of the Purchase Option set forth in Section 9 hereof may at Landlord's election, be added to the purchase price to be paid pursuant to said Purchase Option. The aforesaid remedy shall be Landlord's sole and exclusive remedy as against Tenant on account of a default by Tenant of the terms hereof

## **22. LANDLORD'S REPRESENTATIONS AND WARRANTIES.**

In order to induce Tenant to enter into this Lease, Landlord hereby covenants with and makes the following representations and warranties to Tenant:

A. As of the Commencement Date, Landlord has, and upon the sale and purchase of the Property, or any part thereof, pursuant to the Purchase Option, Landlord shall have good and marketable fee simple title to the Property, which title is and will be subject to no encumbrances, defects, liens, adverse claims or other matters other than the Permitted Exceptions. There are no leases or tenancies with respect to the Property other than this Lease. Landlord's right to possession of the Property is subject only to this Lease and the Permitted Exceptions;

B. To the best of Landlord's knowledge, there is no claim, litigation, proceeding or governmental investigation pending or threatened, against or relating to the Property, the Improvements or Appurtenant Rights or any part thereof, nor is there any dispute arising out of any contest or commitment regarding the Property, the Improvements or Appurtenant Rights or any part thereof

C. Landlord and the person executing this Lease on behalf of Landlord have full right, power and authority to execute this Lease and perform its obligations and consummate the transactions set forth in this Lease and also including the obligations set forth in any documents to be delivered by Landlord to Tenant, including, without limitation, the sale and purchase contemplated by Section 9, and this Lease is the valid, legal, binding and enforceable obligation of Landlord. There are no claims, defenses or offsets to the validity or enforceability against Landlord of this Lease or any of such documents, and the execution and filing of this Lease (or a



memorandum hereof), the consummation of the transaction herein contemplated and the compliance with the terms of this Lease, do not and will not conflict with, or with the giving of notice, the passage of time, the failure to cure or otherwise, result in a breach of any of the terms or provisions of or constitute a default or violation under any indenture, mortgage, loan agreement or other instrument to which Landlord is a party or by which Landlord or the Property or Appurtenant Rights is bound, or any applicable law or regulations of any governmental authority, or judgment, order or decree of any court;

D. To the best of Landlord's knowledge, there are no violations of any ordinances, regulations, laws or statutes of any governmental agency pertaining to the Property or Appurtenant Rights or any part thereof, or the uses thereof, which have not been complied with or corrected;

E. To the best of Landlord's knowledge, the Property and the use thereof for the Phase IV Project are in full compliance with all applicable local, regional, municipal, state and federal laws, statutes, regulations, rules, orders and ordinances, and all public building or other restrictions, including subdivision regulations, environmental and hazardous waste regulations and zoning ordinances, and all private restrictions;

F. Landlord has not, nor to the best of Landlord's knowledge or belief has any predecessor in title or interest, executed or caused to be executed any document with or for the benefit of any governmental authority or other person imposing a charge on, or restricting or governing, the development, use or occupancy of the Property or Appurtenant Rights that is not a Permitted Exception;

G. To the best of Landlord's knowledge, there is no pending or threatened condemnation, eminent domain or similar proceeding affecting the Property or Appurtenant Rights, or any part thereof, Landlord has not received any notice of any such proceeding, nor is any such proceeding or any assessment contemplated by any governmental authority, nor is there any pending litigation or suit threatened or asserted which could result in a lis pendens being lawfully filed against the Property;

H. Except for matters initiated by Tenant, no petition or application has been filed or proceeding otherwise begun, that has not been terminated, with any governmental authority to change or impose or challenge any zoning or other land-use restriction affecting the Property, not to the best knowledge and belief of Landlord has any such petition, application or proceeding been threatened;

I. There are no attachments, judgments, executions, or voluntary or involuntary proceedings in bankruptcy contemplated by or pending or threatened against Landlord or any Guarantor;

J. There are no City of Huntsville or County of Madison, or, to the best of Landlord's knowledge, other governmental moratoria on the creation of new emission sources, the issuance of building permits, or construction or usage of water or sewer connections affecting the Property;

K. To the best of Landlord's knowledge, Pulaski Pike and Bob Wade Lane, as they pass by the Property, are open, public, dedicated rights of way, and on the Commencement Date, Tenant will have free vehicular access to such streets, and there is no proposal or pending action to close, vacate or restrict the use of or access to any portion of such streets;

L. Neither the Property nor any part thereof has been designated as, or contains, a historic site, an archeological site, a historic resource, a historic structure, or to be within a historic district, by the City, the County, or to the best of Landlord's knowledge, the State of Alabama or the U.S. Department of the Interior or any governmental unit, body, commission, agency, department or subdivision, and to the best knowledge of Landlord no formal determination of eligibility for such designation has been made by any of the foregoing, and no petition or proceeding for any such designation or determination is pending;

M. To the best of Landlord's knowledge, the Property does not contain any of the following substances, applied as a finish or otherwise: lead or lead-based paint, polyvinyl chloride, asbestos, radon, polychlorinated biphenyls, any substance emitting formaldehyde, including without limitation urea foam insulation;

N. To the best of Landlord's knowledge, except for the Permitted Exceptions, there are no collective bargaining, labor or employment agreements, management or brokerage agreements, warranties, consulting agreements, service, maintenance, repair, construction, utility, supply and demolition contracts or other agreements affecting or creating the Property, off-site facilities serving the Property, or the Appurtenant Rights, or oral agreements or offers currently in effect relating to said matters or other labor or employment agreements or service, maintenance, repair, utility, rental or supply contracts, or any other contract, agreement or undertaking, whether written or oral, affecting the Property that are not cancelable and that will not have been canceled by Landlord at or prior to the date hereof other than any such agreements or contracts, copies of which Landlord has delivered to Tenant prior to the Commencement Date and which Tenant has approved in writing;

O. To the best of Landlord's knowledge, there is no special legislation or intergovernmental agreement regulating the jurisdiction, development or use of the Property;

P. All crops and other vegetation and all personal property of any kind on the Property on the Commencement Date shall thereupon become the property of Tenant with full right of Tenant to remove, alter, convert to its own use or destroy without permission from or liability to any other person;

Q. Landlord is not a "foreign person" as that term is defined in Code Section 1445(f) or any successor thereto;

R. There are no unresolved disputes concerning the purchase of the Property or the Appurtenant Rights by Landlord or the construction, repair or maintenance of the improvements or any portion thereof;

S. Except for the Permitted Exceptions, at closing there will be no easements burdening the Property for the benefit of any land owned or controlled, directly or indirectly, solely or in part, by Landlord, or if there is, Landlord shall disclaim it or assign the benefits of it to Tenant;

T. Landlord has not received any notice of any violation or alleged violation of any law, zoning, ordinance, municipal ordinance, code or regulation affecting the Property or Appurtenant Rights nor has Landlord received notice of any legal action or investigation of any kind involving the Property or Appurtenant Rights;

U. No work has been performed nor is in progress by Landlord, and no materials have been furnished by Landlord for the Property or any portion which might give rise to mechanics', materialmen's or other liens against the Property or any portion thereof;

V. To the best of Landlord's knowledge, the Property (and no portion thereof): (i) has never been the site of any activity which would violate any past or present Law, including any Environmental Law; and (ii) is not presently being used nor at any time in the past has been used as a dump or other waste disposal site;

W. There are no adverse parties in possession of the Property or any of its parts and no other parties in possession, and no party that has been granted any license, lease or other right relating to the use or possession of the Property;

X. There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion of it, except the Lease;

Y. To the best of Landlord's knowledge, there are no actions, suits, claims, proceedings or causes of action which are pending or have been threatened or asserted against, or are affecting, Landlord, the Property or any part of it, in any court of before any arbitrator, board or governmental or administrative agency or other person or entity which might have an adverse effect on the Property or any portion of it or on Tenant's ability (or that of co-located suppliers) to operate the Property as a Project and uses ancillary thereto from and after the Commencement Date;

Z. Landlord is not prohibited from consummating the transaction contemplated in this Lease by any law, regulation, agreement, instrument, restriction, order or judgment; and

AA. Landlord has the legal power and authority to enter into this Lease and to make the respective commitments made in this Lease, and to the extent that any authorization, approval or consent of any other government authority, body or agency or third party is required for it to enter into this Lease, and make the commitments contained in this Lease, such authorizations, approvals and consents have been duly obtained in accordance with applicable law and procedures. In furtherance of the foregoing, Landlord has adopted or entered into the original and duly authorized resolutions and/or agreements attached hereto as Exhibit D and made a part hereof.

The above covenants, representations and warranties and all other covenants, representations and warranties contained in this Lease shall be deemed re-made on the closing pursuant to the Purchase Option, and shall survive the execution of this Lease and the purchase of the Property or any part thereof by Tenant, and shall not be merged therein or with the deeds.

23. NONMERGER.

If both Landlord's and Tenant's estates in the Premises shall, at the same time, become vested in the same owner, this Lease shall nevertheless not be extinguished by application of the doctrine of merger, except as otherwise expressly elected by the owner and with the prior consent of all Leasehold Mortgagees.

24. ESTOPPEL CERTIFICATES.

Landlord shall, at any time and from time to time, upon not less than ten (10) days prior written notice from Tenant, execute, acknowledge and deliver to Tenant, in form and content satisfactory to Tenant and/or any Leasehold Mortgagee, a written statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that same is in full force and effect as modified, and stating the modifications), that the Tenant is not in default hereunder (or if any default by Tenant has occurred and is continuing, then Landlord shall specify the nature and period of existence thereof and any action which Landlord has taken or proposes to take with respect thereto), the date to which Tenant has paid rent and other charges or such other accurate certification as Tenant or any Leasehold Mortgagee may reasonably require, and agreeing to provide copies to any Leasehold Mortgagee of all notices from Landlord to Tenant. It is intended that any such statement delivered pursuant to the terms of this section may be relied upon by any Leasehold Mortgagee or prospective Leasehold Mortgagee and their respective successors and assigns.

25. MODIFICATIONS.

None of the covenants, terms or conditions of this Lease to be kept and performed by either party shall in any manner be altered, waived, modified, changed or abandoned except by a written instrument, duly signed, acknowledged and delivered by each party to the other party; and no act or acts, omission or omissions, or series of acts or omissions, or waiver, acquiescence or forgiveness by either party as to any default in or failure of performance, either in whole or in part by the other party, of any of the covenants, terms, and conditions of this Lease, shall be deemed or construed to be a waiver of the rights at all times thereafter to insist upon the prompt, full and complete performance of each and all the covenants, terms, and conditions hereof thereafter to be performed in the same manner and the same context as the same are herein covenanted to be performed.

26. NOTICES.

All notices, demands, or other communications desired or required to be given under any of the provisions of the Lease shall be in writing. Any notices or demands from either party to the other shall be deemed to have been sufficiently given one (1) regular business day after a copy thereof has

been delivered to nationally recognized overnight courier service or sent by telecopier with a confirmation of receipt, or four (4) days after deposit in the United States Postal Service by registered or certified mail, postage prepaid and return receipt requested, in accordance with the following:

If to Landlord:	The City of Huntsville 308 Fountain Circle Post Office Box 308 Huntsville, Alabama 35804-0308 Attention: City Attorney
If to Tenant:	The Industrial Development Board of the City of Huntsville 205 Church Street Post Office Box 408 Huntsville, Alabama 35804 Attention: Secretary
With copies to:	Daniel M. Wilson Maynard, Cooper & Gale, P.C. 655 Gallatin Street Huntsville, Alabama 35801

or at such other address as either party may hereafter furnish by written notice to the other party in accordance with the terms hereof. Notices sent by an attorney on behalf of a party which is his/her client shall be deemed made by such party.

27. GOVERNING LAW.

This Lease shall be construed and enforced in accordance with the laws of the State of Alabama.

28. RECORDATION OF LEASE.

At the election of Tenant, this Lease, or a short form memorandum of this Lease, shall be recorded, or filed, in the appropriate public records. Contemporaneously with the execution of this Lease, Landlord shall execute and deliver to Tenant a short form of memorandum of this Lease in the form of Exhibit E attached hereto and made a part hereof, in recordable form, containing the names of the parties and, the legal description of the Premises, the term of this Lease, the existence of the Purchase Option and any other information required or acceptable to Tenant.

29. TIME OF ESSENCE.

Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

30. SEVERABILITY.

In the event that in any jurisdiction the law of which shall apply, any provision of this Lease shall be finally adjudicated invalid or unenforceable in whole or in part or shall cause this Lease to be unenforceable in whole or in part, such provision shall be limited for purposes of such jurisdiction to the extent necessary to render the same and the remainder of this Lease valid and enforceable, or shall be exercised from this Lease for purposes of such jurisdiction, as circumstances require to preserve the validity and enforceability of the remainder of this Lease and this Lease shall be construed for purposes of such jurisdiction as if said provision ab initio had been incorporated herein as so limited or had not been included herein, as the case may be. In the event any such provision is so limited and eliminated, the party for whose benefit such provision was previously intended shall specify a substitute obligation reasonably tailored to provide the same or similar outcome or economic benefit as the limited or eliminated provision, and the counter party shall perform such substitute obligation.

31. SUCCESSORS AND ASSIGNS.

All of the covenants, agreements, conditions and undertakings contained in this Lease shall extend to and inure to the benefit of and be binding upon the successors and permitted assigns of the respective parties hereto the same as if they were in every case specifically named, and shall run with the land, and whenever in this Lease reference is made to either of the parties hereto, it shall be held to include and apply to, wherever applicable, the successors and assigns of such party. Landlord shall not convey any interest in the Property or Appurtenant Rights or assign this Lease without the prior written consent of Tenant, which may be withheld by Tenant in its discretion.

32. RECITALS: HEADINGS AND EXHIBITS.

The recitals to this Lease are hereby incorporated by this reference and made a part hereof and shall be deemed covenants and representations binding upon and applicable to the parties hereto.

Headings of paragraphs are for convenience and reference only and shall not be construed as part of this Lease. All exhibits and schedules referred to herein and attached hereto are a part of this Lease.

33. DUE EXECUTION AND COUNTERPARTS.

All of the parties hereto represent and warrant that they each have the legal right, power and authority to enter into this Lease and to consummate the transactions contemplated hereby the execution, delivery and performances of this Lease have been duly authorized and no other action is requisite to the valid and binding execution, delivery, and performance of this Lease. This Lease may be executed in counterparts, each of which the executed and delivered shall be deemed an original.

34. FURTHER ASSURANCES.

Landlord shall take such actions and execute such further instruments, agreements or other documents as may be necessary or convenient in order to consummate the transactions hereby or to confirm any of the provisions hereof to be performed by Landlord or to be delivered by Landlord, as may be reasonably requested by Tenant.

35. TENANT'S AND LANDLORD'S COSTS.

Landlord shall bear all costs and expenses (including attorney's fees) incurred by Landlord in connection with the negotiation, preparation and execution of the Lease and operation thereunder. Tenant shall bear all costs and expenses (including attorney's fees) incurred by the Tenant in connection with the negotiation, preparation and execution of this Lease and operation thereunder.

36. MISCELLANEOUS.

A. This Lease constitutes the entire agreement and understanding of the parties with respect to the Lease of the Property by Landlord to Tenant, and the option of Tenant to purchase the Property and Improvements, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, representations, or covenants with respect to such matters not contained herein.

B. Any representation made herein by Landlord shall be deemed to be a representation made also on the basis of the knowledge and acts of Landlord's agents, employees, beneficiaries, counsel, partners, officers and directors.

C. Any portion of this Lease not completed or fulfilled at or by closing on the sale and purchase of the Property contemplated by Section 9 shall not merge with the deal and shall survive the closing of said transaction as a continuing agreement by and between parties.

D. The enumeration herein of remedies available to a party shall not limit or be interpreted to waive any other remedies or rights available to such party at law or in equity, except for limitations and waivers expressly stated in this Lease. Examples and words of inclusion (e.g., "including") shall not be construed as a limitation on the breadth of meaning of the phrase or word referenced or preceding, and any other conflict between such referenced or preceding phrase or word and the example or inclusion phrase or word shall be resolved by construing such example or inclusion phrase or word as an addition to the referenced or preceding phrase or word.

E. Tenant and Landlord represent one another, each with respect to its own actions, that no broker or real estate consultant which has not been fully paid has been employed or was used by it or was instrumental in connection with the transaction evidenced by this Lease or the lease or the sale of the Property. Tenant and Landlord each agree to indemnify the other from any loss, cost or expense, including attorney's fees, which results from any act or claim which is inconsistent with the portion of the foregoing representation made by the party who is not in such instance the indemnified party.

37. LANDLORD'S LIABILITY.

Landlord shall have no personal liability with respect to the provisions of Sections 5.B.(2), 6.E.(2), 9.E.(2), 1 LA., 11.B., 11.G., 11.11., 16, 17.A., 22.A. and 22.X. of this Lease, and Tenant's sole recourse under this Lease with respect to said provisions shall be against the Property, the Improvements and the Appurtenant Rights; provided, however, that the preceding limitation on Landlord's personal liability shall not apply, and Landlord shall be personally liable under the provisions of this Lease enumerated above, to the extent that (i) circumstances giving rise to a claim under any of the foregoing enumerated provisions were actually caused by the Landlord, or (ii) Landlord has proceeds or contract or other rights relative thereto, including but not limited to insurance policies, title insurance policies, contracts, agreements, indemnifications, guaranties, warranties, awards, claims and/or causes of action (collectively, "Landlord's Rights"). Tenant shall have the right in Landlord's name to pursue Landlord's Rights with respect to the provisions enumerated above and to enforce and apply for Tenant's benefit any of such rights, including but not limited to the right to bring suit, all at Tenant's sole expense. Landlord shall cooperate fully with Tenant in its efforts to pursue and realize on Landlord's Rights. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IT IS EXPRESSLY AGREED THAT ANY PECUNIARY LIABILITY OR OBLIGATION OF THE LANDLORD HEREUNDER SHALL BE LIMITED SOLELY TO THE NET REVENUES RECEIVED BY THE LANDLORD FROM ANY DISPOSITION OF THE PHASE IV PROJECT OR FROM THE TENANT, AND NOTHING CONTAINED IN THIS LEASE SHALL EVER BE CONSTRUED TO CONSTITUTE A PERSONAL OR PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OF THE LANDLORD OR AGAINST ANY OFFICERS, DIRECTORS OR EMPLOYEES THEREOF, AND IN THE EVENT OF A BREACH OF ANY UNDERTAKING ON THE PART OF THE LANDLORD CONTAINED IN THIS LEASE, NO PERSONAL OR PECUNIARY LIABILITY OR CHARGE PAYABLE DIRECTLY OR INDIRECTLY FROM THE GENERAL REVENUES OF THE LANDLORD SHALL ARISE THEREFROM; PROVIDED, HOWEVER, THAT THE LIMITATION OF LIABILITY CONTAINED HEREIN APPLIES ONLY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE, AND SHALL IN NO WAY LIMIT OR REDUCE THE OBLIGATIONS OF THE CITY TO GUARANTEE THE FULL PAYMENT AND PERFORMANCE OF ALL OF LANDLORD'S OBLIGATIONS HEREUNDER, AS SET OUT IN EXHIBIT D HERETO.**

38. ALTERNATIVE DISPUTE RESOLUTION.

In the event of a dispute concerning this Lease or the parties' obligations hereunder, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, the parties agree to submit the matter in dispute to binding arbitration. Written notification of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes or, if the parties so agree, the relevant rules of another arbitration entity or organization agreed upon by the parties. In any case, regardless of any rules of the selected arbitration entity or organization to the contrary, only one



arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in Huntsville, Alabama, or if the parties agree on another location, that other location. The prevailing party shall be entitled to an award of attorneys' fees. The arbitration shall be governed by the United States Arbitration Act, 9. U.S.C. §§1-16.

39. CONFIDENTIALITY.

The provisions of Section 7.8 of the Project Diamond Agreement are hereby incorporated into this Lease by reference.

40. CONFLICTS.

The parties expressly acknowledge that in the event of a conflict between any provision of this Lease and any provision of the Project Diamond Agreement, the terms and provisions of this Lease shall control.

41. RIGHT TO SET OFF.

Notwithstanding anything to the contrary contained herein, at any time throughout the term of this Lease, either party hereto may set off and reduce any amounts owing to the other party by any amounts then owing from that other party.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officials as of the date first above written.

**LANDLORD:**

**THE CITY OF HUNTSVILLE**, an Alabama public corporation

By: \_\_\_\_\_  
Tommy Battle

Its: Mayor

Date of Landlord's Execution \_\_\_\_\_, 2012

**TENANT:**

**INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF HUNTSVILLE**, an Alabama public corporation

By: \_\_\_\_\_  
Hundley Batts

Its: Vice-Chairman

Date of Landlord's Execution \_\_\_\_\_, 2012

ACKNOWLEDGMENT OF CITY

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said County and State hereby certify that Tommy Battle, whose name as Mayor of **THE CITY OF HUNTSVILLE**, a public corporation organized under the laws of the State of Alabama, is signed to the foregoing Ground Lease and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2012

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

ACKNOWLEDGMENT OF TENANT

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said County and State hereby certify that Hundley Batts, whose name as Vice-Chairman of the **INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE**, a public corporation organized under the laws of the State of Alabama, is signed to the foregoing Ground Lease and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2012

[SEAL]

\_\_\_\_\_  
Notary Public

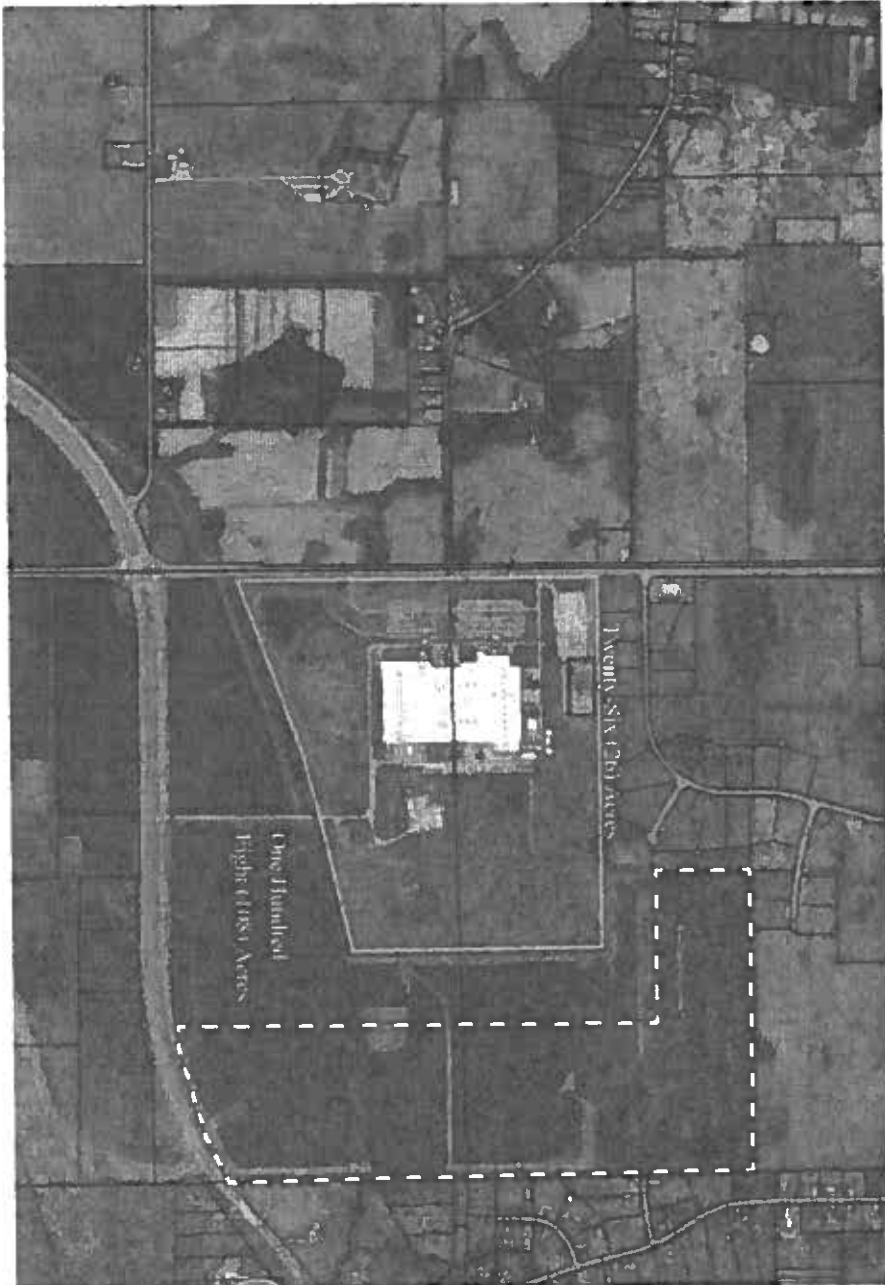
My Commission Expires: \_\_\_\_\_

## **INDEX OF EXHIBITS**

<b>Exhibit A</b>	<b>Site Plan</b>
<b>Exhibit B</b>	<b>Form of Statutory Warranty Deed</b>
<b>Exhibit C</b>	<b>Endorsements for Leasehold Title Policy and Owner's Title Policy</b>
<b>Exhibit D</b>	<b>Resolutions and Agreements of Landlord</b>
<b>Exhibit E</b>	<b>Memorandum of Ground Lease Agreement</b>

**EXHIBIT A**  
**SITE PLAN**

**North Huntsville Industrial Park - Site Plan**



**EXHIBIT B**

**FORM OF STATUTORY WARRANTY DEED**

Send tax notice to:

Return To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF ALABAMA    )  
COUNTY OF MADISON )

**STATUTORY WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS,

THAT TN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration to the undersigned grantor, \_\_\_\_\_ (hereinafter "Grantor"), in hand paid by \_\_\_\_\_ (hereinafter "Grantee") the receipt of which is hereby acknowledged, Grantor does by these presents, grant, bargain, sell and convey unto Grantee all that tract or lot of land lying in the County of Madison, State of Alabama, and more particularly described as follows, subject, however, to the permitted exceptions described on Exhibit "A" attached hereto and incorporated herein by reference (the "Permitted Exceptions").

TO HAVE AND TO HOLD, to the said Grantee, its heirs and assigns, forever.

IN WITNESS WHEREOF, Grantor has executed and sealed this indenture, and delivered this indenture to Grantee, all this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

GRANTOR:

\_\_\_\_\_

[add notary acknowledgment]

## **EXHIBIT C**

### **ENDORSEMENTS FOR LEASEHOLD TITLE POLICY AND OWNER'S TITLE POLICY**

The Final Policy will also include the endorsements attached hereto (specimen copies), which shall be the following:

- a.     **C o m p r e h e n s i v e ( A L T A 9 ) ( s u b j e c t t o r e c e i p t o f a f f i d a v i t r e l a t i n g t o t h e s u r v e y )**
- b.     **A c c e s s**
- c.     **L e a s e h o l d**
- d.     **A L T A 3.0 Z o n i n g**
- e.     **S u r v e y**

Adopted: \_\_\_\_\_

RESOLUTION NO. 12- \_\_\_\_\_

WHEREAS, the State of Alabama, Madison County, the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc., entered into an agreement for the location of a Toyota manufacturing facility in the North Huntsville Industrial Park, as amended by: that certain First Amendment to Project Diamond Agreement dated as of December 4, 2003 (the "First Amendment"); by that certain Second Amendment to Project Diamond Agreement dated as of December 16, 2004 (the "Second Amendment"); by that certain Third Amendment to Project Diamond Agreement dated as of October 14, 2010 (the "Third Amendment"); and by that certain Fourth Amendment to Project Diamond Agreement dated as of July 1, 2011, and by that certain Fifth Amendment to Project Diamond Agreement dated as of July 26, 2012 (the "Fifth Amendment;" the original agreement, as modified by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment (hereinafter referred to as the "Project Diamond Agreement"); and

WHEREAS, each of the parties to the agreement are responsible for certain financial and other obligations thereunder; and

WHEREAS, the City of Huntsville has authorized the lease of an approximately 108 acre tract and an approximately 26 acre tract in the North Huntsville Industrial Park (collectively, the "Phase IV Land") to the Industrial Development Board of the City of Huntsville pursuant to a Ground Lease Agreement between the City of Huntsville and the Industrial Development Board of the City of Huntsville in substantially the form attached hereto as Exhibit A (the "Ground Lease"), for lease, and potential ultimate sale, to Toyota Motor Manufacturing, Alabama, Inc., pursuant to a Sub-Ground Lease Agreement between the Industrial Development Board of the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc., in substantially the form attached hereto as Exhibit B (the "Sub-Ground Lease"); and

WHEREAS, the Ground Lease and Sub-Ground Lease provide for certain options and rights of first refusal in favor of Toyota Motor Manufacturing, Alabama, Inc., with respect to the Phase IV Land; and

WHEREAS, pursuant to the Sub-Ground Lease, the Industrial Development Board is required to perform certain obligations; and

WHEREAS, it is the intent of the City Council of the City of Huntsville, to approve the Fifth Amendment to Project Diamond Agreement in substantially the form attached hereto as Exhibit C, to ratify the Project Diamond Agreement, to approve the Ground Lease, to approve the form of the Sub-Ground Lease and to guaranty the



performance of the Industrial Development Board under the Fifth Amendment to Project Diamond Agreement and the Sub-Ground Lease referenced hereinabove.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into an Amendment to Project Diamond Agreement, which said agreement is attached hereto and identified as "Fifth Amendment to Project Diamond Agreement among the City of Huntsville, the State of Alabama, Madison County, Alabama, and Toyota Motor Manufacturing, Alabama, Inc.," consisting of fourteen (14) pages including Exhibits A and B, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama, and the City Council of the City of Huntsville does hereby ratify the Project Diamond Agreement; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into a Ground Lease which said agreement is attached hereto and identified as "Ground Lease Between the City of Huntsville and the Industrial Development Board of the City of Huntsville," consisting of forty-six (46) pages including Exhibits, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into a Sub-Ground Lease which said agreement is attached hereto and identified as "Sub-Ground Lease Between the City of Huntsville and the Industrial Development Board of the City of Huntsville," consisting of sixty-two (62) pages including Exhibits, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an execute copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama; and

**BE IT FURTHER RESOLVED**, that the City of Huntsville does hereby guarantee the performance of all obligations of the Industrial Development Board under both the Fifth Amendment to Project Diamond Agreement and the Sub-Ground Lease between the Industrial Development Board of the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc.; and

BE IT FURTHER RESOLVED, that any options and rights of first refusal set out in the Sub-Ground Lease are binding on the City for so long as title to such land remains in the City, and the City agrees to allow Toyota Motor Manufacturing, Alabama, Inc., to exercise any such options on the terms and conditions set out in the Sub-Ground Lease by providing notice thereof to the City, and the City agrees in such event to honor the obligations of the Landlord under the Sub-Ground Lease.

ADOPTED this the \_\_\_\_ day of July, 2012.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the \_\_\_\_ day of July, 2012.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

**EXHIBIT E**

**MEMORANDUM OF GROUND LEASE AGREEMENT**

This Instrument Prepared By:

Leslie Caren Sharpe  
MAYNARD, COOPER & GALE, P.C.  
655 Gallatin Street  
Huntsville, Alabama 35801  
(256) 551-0171

STATE OF ALABAMA            )

COUNTY OF MADISON        )

**MEMORANDUM OF GROUND LEASE AGREEMENT**

This Memorandum of Ground Lease Agreement made this \_\_\_\_ day of July, 2012, is made with respect to the following described Ground Lease Agreement dated effective \_\_\_\_\_, 2012, between **THE CITY OF HUNTSVILLE** (the "Landlord") and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE** (the "Tenant").

1.     Date of Ground Lease. Landlord and Tenant have entered into the Ground Lease and Option Agreement effective the \_\_\_\_ day of \_\_\_\_\_, 2012, with a commencement date of \_\_\_\_\_, 2012 (the "Lease").

2.     Term. The term of the Lease is ten (10) years.

3.     Description of Leased Premises. The Leased Premises is two parcels of land located in the North Huntsville Industrial Park in Madison County, Alabama, more particularly described in Exhibit "A" attached hereto.

This Memorandum of Ground Lease is prepared for recording and for the purpose of making a public record of said Lease, and it is intended that the parties shall be subject to all of the provisions of said Lease, and that nothing herein shall be deemed to alter or change any of the terms or provisions of said Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Ground Lease on the day and year first above written.

**LANDLORD:**

**THE CITY OF HUNTSVILLE**, an Alabama public  
corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HUNTSVILLE**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[add notary blocks and Exhibit A]

**EXHIBIT B**

**FORM OF SUB-GROUND LEASE**

**SUB-GROUND LEASE AGREEMENT**

**BY AND BETWEEN**

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF HUNTSVILLE,  
AN ALABAMA PUBLIC CORPORATION,  
AS LANDLORD**

**AND**

**TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.,  
AN ALABAMA CORPORATION  
AS TENANT**

**DATED AS OF \_\_\_\_\_, 2012**

## **SUB-GROUND LEASE AGREEMENT**

**THIS SUB-GROUND LEASE AGREEMENT** (this "Lease") is made and entered into as of the Commencement Date (defined herein), by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE**, a public corporation organized under the laws of the State of Alabama (herein referred to as the "Landlord") with its principal office at 225 Church Street, Huntsville, Alabama 35801, and **TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.**, an Alabama corporation (herein referred to as "Tenant"), with its principal office at 1 Cottonvalley Drive, Huntsville, Alabama 35810.

### **WITNESSETH:**

WHEREAS, Tenant constructed, owns and operates a motor manufacturing facility (the "Original Project") on approximately 197.5 acres located at 1 Cottonvalley Drive, Huntsville, Alabama 35810 (the "Original Project Site"), in the North Huntsville Industrial Park (the "Industrial Park"); and

WHEREAS, in order to induce Tenant to construct the Original Project in the City of Huntsville, Madison County, Alabama, over many other sites outside the City of Huntsville being evaluated by Tenant, the State of Alabama, the County of Madison, Alabama, the City of Huntsville and Tenant entered into that certain Project Diamond Agreement dated February 5, 2001, as amended by: that certain First Amendment to Project Diamond Agreement dated as of December 4, 2003 (the "First Amendment"); by that certain Second Amendment to Project Diamond Agreement dated as of December 16, 2004 (the "Second Amendment"); by that certain Third Amendment to Project Diamond Agreement dated as of October 14, 2010 (the "Third Amendment"); and by that certain Fourth Amendment to Project Diamond Agreement dated as of July 1, 2011 (the "Fourth Amendment"), as amended by that certain Fifth Amendment to Project Diamond Agreement dated as of July 26, 2012 (the "Fifth Amendment," the original agreement, as modified by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment, is hereinafter referred to as the "Project Diamond Agreement"; and

WHEREAS, Toyota has agreed to further expand the scope of the Original Project and has agreed to make an additional capital investment for the construction of a 2 GR Line Engine facility, access road and related improvements and related facilities appurtenant thereto, which may include related facilities on the Property owned by vendors or contractors of Tenant (collectively, the "Phase IV Project"); and

WHEREAS, in order to induce Tenant to construct the Phase IV manufacturing facility in the City of Huntsville, Madison County, Alabama, the parties hereto have entered into this Agreement; and

WHEREAS, pursuant to that certain Ground Lease between the City of Huntsville, as landlord, and the Industrial Development Board of the City of Huntsville, as tenant, Landlord is the sole owner of a leasehold interest in and to certain real property comprised of (i) the

approximately 26 acre tract of land owned by the City and located immediately to the north of the Original Project Site, and (ii) the approximately 108 acre tract of land owned by the City and located immediately to the east of the Original Project (hereinafter collectively referred to as the "Property") and legally described on the site plan attached hereto as Exhibit A and made a part hereof; and

WHEREAS, in conjunction with this lease, Tenant will likely spend substantial amounts of time and money in the planning and construction of the Phase IV Project; and

WHEREAS, Landlord is charged with the statutory responsibility to promote industrial development within the City of Huntsville, County of Madison, Alabama; and

WHEREAS, in order to enable Landlord to carry out the responsibilities set forth above, Landlord has the power and authority pursuant to Alabama Code §11-20-30 et seq. (1975) to rent, lease, buy, own, acquire, mortgage, sell, convey, transfer, assign and otherwise dispose of property; and

WHEREAS, Landlord desires to lease and negotiate to sell (subject to the terms of the right to negotiate a purchase option contained herein) the Property to Tenant pursuant to the terms hereof; and

WHEREAS, Tenant desires to lease the Property from Landlord; and

WHEREAS, the City of Huntsville, an Alabama municipal corporation (the "City"), with its principal office at 308 Fountain Circle, Post Office Box 308, Huntsville, Alabama 35804-0308, has guaranteed the payment and performance of all obligations of Landlord hereunder, as evidenced by the Resolutions of the City attached hereto as Exhibit B. The City may sometimes be referred to herein as "Guarantor."

NOW, THEREFORE, for and in consideration of the mutual covenants herein set forth and the sums herein to be paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Landlord and Tenant hereby mutually covenant and agree as follows:

1. GRANT.

A. Landlord hereby demises, rents and leases to Tenant, and Tenant hereby leases and hires from Landlord, the Property, together with:

(1) Any and all rights and privileges directly or indirectly in any way belonging to or under the control of the Landlord, or any affiliate or agency thereof, or any party acting upon and on their behalf (the foregoing being, collectively, "Landlord's Agents"), or in which Landlord or Landlord's Agent has an interest on or as of the date of this Lease or thereafter, as leasehold owner of or appurtenant to the Property or otherwise, in, to or in respect of rights of real estate pertaining, connected, subordinate or in proximity to the Property, including without limitation, strips, gores, easements, options, after-acquired title, development rights, condemnation awards, claims,



oil, gas, sand, gravel, limestone, bedrock, water or mineral rights, or rights of way (the foregoing, together with the rights and matters set forth in Section 1.A.(3) below, being collectively, the "Appurtenant Rights");

(2) Any and all buildings, structures, fixtures and other improvements hereafter located upon, in or under or placed upon, in or under the Property during the term (as such term is herein defined) of this Lease, including without limitation the Phase IV Project and all equipment appurtenant thereto (the foregoing being, collectively, the "Improvements"); and

(3) Any and all right, title and interest of Landlord or any Landlord's Agent in, to and under any adjoining streets, alleys, public docks, bridges and other public ways;

The Property (except as otherwise excluded pursuant to Section 11.G. hereof), and all the rights, interest and appurtenances set forth above, are hereinafter jointly or severally, as the context may require, referred to as the "Premises."

B. Landlord hereby represents and warrants to, and covenants with, Tenant that as of the date hereof, and as of the Commencement Date (as such term is defined herein), Landlord owns a leasehold interest in and to the Property free and clear of all liens, encumbrances, easement and servitudes, except as to those which are a matter of public record, which are approved by Toyota and which will not interfere with the use of the Property by Toyota for its intended purpose. (said exceptions are herein referred to as the "Permitted Exceptions") and has all necessary right, authority and power to lease and demise the Premises. In reliance upon the representations, warranties and covenants of Landlord contained in this Lease, including but not limited to those contained in this subsection and in Sections 11 and 22, Tenant hereby accepts this Lease and leasehold estate and the rights and interest herein created in its favor, subject only to the Permitted Exceptions. Landlord covenants and agrees with Tenant that during the term of this Lease, it shall not convey, release, grant, encumber, restrict, pledge, mortgage or quitclaim all or any part of the Premises except as expressly provided for herein or with Tenant's prior written consent, which consent may be withheld in Tenant's sole and absolute discretion. Landlord hereby grants the right in favor of the Tenant to require the City to grant a perpetual easement over the Property in favor of Tenant, providing access, the right to repair and maintain any improvements constructed thereon or on the Original Project Site by Tenant, and prohibiting the construction of any improvements thereon by any party other than Tenant, without Tenant's prior written consent (the "Easement"). The parties agree to negotiate in good faith said Easement in recordable form. Further, at any time during the Lease Term, at Tenant's request, Landlord will cause the City to negotiate in good faith with Tenant for an option to acquire the Property.

## 2. TERM.

A. The term of this Lease shall be ten (10) years (the "Term"), commencing on the later of the respective dates of execution by Landlord and Tenant, as shown on the signature page hereof (the "Commencement Date") and ending at 11:59 p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary of the Commencement Date (the "Termination Date").

B. From and after the Commencement Date through the term of this Lease, Landlord agrees that it will not market, sell, convey, lease, encumber, option or grant any rights in favor of any third party with respect to the Property, without first obtaining the written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion. In addition, during such period Landlord agrees not to develop or allow any third party to develop all or any part of the Property for any purpose whatsoever. The parties acknowledge and agree that part of the consideration for Tenant's agreement to select the Property and enter into this Lease is the agreement by the Landlord to restrict the sale or development of the Property.

3. RENT.

Beginning on the Commencement Date and on each one (1) year anniversary thereafter during the term of this Lease, Tenant shall pay to Landlord annual rent equal to the sum of One Dollar (\$1.00). Rent shall be paid to Landlord at 225 Church Street, Huntsville, Alabama, 35801, Attention: Secretary. Tenant shall have the option from time to time to prepay some or all of the annual rent to accrue during the Term. The amounts payable under this Lease by Tenant pursuant to this Section 3 are sometimes referred to as the "Rent".

4. CONSTRUCTION AND OWNERSHIP OF THE PHASE IV PROJECT.

A. During the term of this Lease, Tenant shall have the absolute right, but not the obligation, at any time and from time to time, at Tenant's expense, to: (i) remove and/or demolish, in whole or in part, any and all roads, utility infrastructure, buildings and improvements, and any and all fixtures and equipment now attached or appurtenant thereto, which are located on the Property, if any (the foregoing being, collectively, the "Existing Improvements"); (ii) construct, erect or install new buildings and improvements on all or any part of the Property, and thereafter remove and/or demolish, in whole or in part, the same, including any and all fixtures and equipment attached or appurtenant thereto; (iii) alter, modify, repair, relocate, restore, reconstruct, replace or add to any buildings and improvements now or hereafter located on the Property; (iv) modify, alter or change the contour, grade or condition of the Property, or any part thereof; (v) remove, relocate or replace all of the foregoing, any vegetation or wildlife now or hereafter located on the Property, or any part thereof, or all of the foregoing; and (vi) construct and install railroad tracks, switches and lines, roadways, driveways, parking areas, poles, conduits, tunnels, pipelines, wells, septic areas, tunnels, and/or lines for telephone, electricity, water, gas, sanitary and/or storm sewers and for other utilities and municipal and special district services, and any and all other improvements and facilities which Tenant deems necessary or desirable for the construction, operation or maintenance of the Phase IV Project. Further, Tenant shall have the absolute right, but not the obligation, at any time and from time to time to cause one or more of Tenant's vendors or contractors to perform any of all of the activities described in subparagraphs (i) through (vi) above. With respect to any and all of the activities described in subparagraphs (i) through (vi) above, Tenant may make all purchases related to such activities using Sales and Use Tax Certificates of Exemption, pursuant to Alabama Code § 40-9B-1, et seq. (1975). In addition, the Tenant may from time to time, without the consent of the Landlord, use such Certificates of Exemption to make any purchases of machinery, fixtures, equipment, and other tangible personal property for installation upon, incorporation into, or use in connection with the Phase IV Project.

B. At all times and from time to time, excluding work performed by Tenant or Tenant's affiliates or agents on the Premises, Landlord shall keep the Premises free and clear of all liens, charges, interest and encumbrances resulting from the performance of any and all work performed by or at the request of Landlord or any of its affiliates or agents or the furnishing of materials to, upon or in any way affecting the Premises. Upon the performance of any work or the furnishing of any material or services to or in any way affecting the Premises by Landlord, Landlord shall provide to Tenant, upon Tenant's request therefor, evidence satisfactory to Tenant of the full and final payment for all work, material and service provided to, upon or in any way affecting the Premises.

C. Title to any and all Improvements now or at any time hereafter located or placed upon, in or under the Premises, or any part thereof, shall, at all times during the term of this Lease, be and remain vested in Tenant. Landlord will have no right, title, or interest in the Improvements or other improvements on the Property.

D. Without limiting the Purchase Option, Tenant may construct a roadway (including curb and gutter) to the Phase IV manufacturing facility (the "Access Road"), over and across the Property in an area to be determined by Tenant in its sole discretion (the "Access Road Area"). Throughout the term of this Lease, Tenant shall maintain the Access Road at its expense and shall have full control over and exclusive use of the Access Road and Access Road Area. Landlord shall not allow any vehicular, pedestrian or other access onto or off of the Access Road without the Tenant's prior written consent, which consent may be withheld in Tenant's sole and absolute discretion. Tenant may, from time to time in its discretion, place fencing and/or access controls around or across the Access Road Area. Tenant shall have the right to place signage on and around the Access Road Area designating the Access Road as a private road, to control all activities thereon, to remove or have removed trespassers or other unauthorized users of the Access Road, and to otherwise exercise any and all property rights relating to the Access Road Area and the Access Road. The rights and obligations created hereby shall survive the termination of this Lease in the event Tenant has been granted the Easement or has exercised the Purchase Option (defined herein).

## **5 REQUIREMENTS UPON EXECUTION.**

A. Prior to the date hereof, Landlord has delivered to Tenant, at Landlord's sole cost and expense, a commitment (the "Leasehold Title Commitment") issued by title insurance company selected by Tenant (the "Title Insurer") for an ALTA Leasehold Owner's Policy of Title Insurance in form acceptable to Tenant (the "Leasehold Title Policy"), which Leasehold Title Policy shall (i) be in the amount of up to \$2,830,000,000; (ii) show City of Huntsville as the sole owner of good marketable fee simple title, and Landlord as the owner of a leasehold interest in and to, the Property and any other Appurtenant Rights identified by Tenant to Landlord, subject only to the Permitted Exceptions; (iii) insure the interest of Tenant in and to the Property under the Lease; (iv) provide for extended coverage over general exceptions numbers 1 through 5 contained in the general form of such title policies; (v) insure with the endorsements identified on Exhibit D attached hereto and made a part hereof: (a) unrestricted access to and from the Property; and (b) the other matters set forth in Exhibit D; and (vi) contain mineral rights coverage. Contemporaneously with the execution of this Lease, Landlord shall cause the Title Insurer to issue the Leasehold Title Policy to Tenant. The fact that a matter is a Permitted Exception does not constitute a waiver or

acceptance of such circumstance for any purpose other than title. Landlord hereby agrees to pay or cause the City of Huntsville to pay the relevant title company all of its fees and premiums attributable to the searches and the issuance of all title policies covering the Property (including the owner's policy if Tenant elects to purchase the land), together with the cost of any endorsements required by Toyota

B. (1) If the Leasehold Title Commitment discloses unpermitted exceptions, Landlord shall have thirty (30) days from the date of delivery thereof to have the unpermitted exceptions removed from the commitment or to have the Title Insurer commit, in substance and manner as approved by Tenant, to insure against loss or damage that may be occasioned by such unpermitted exceptions, provided that if Landlord fails to have the unpermitted exceptions removed or in the alternative, to obtain the commitment for title insurance specified above as to such unpermitted exceptions within the specified time. Tenant may terminate this Lease or may elect within thirty (30) days after the expiration of the aforesaid 30-day period, to lease the Premises subject to such unpermitted exceptions, in which event, at Tenant's option, Tenant shall have the right to apply against all sums due hereunder or due to Landlord under any other agreement or circumstance the cost required by the Title Insurer to issue a waiver on the Leasehold Title Policy of such unpermitted exceptions or the premium payable upon a surety bond required by the Title Insurer to issue its title policy insuring over such unpermitted exceptions as aforesaid.

(2) Landlord shall reimburse such cost and premium to Tenant upon demand. Further, Landlord hereby indemnifies and holds harmless Tenant, its successors and assigns from and against any loss, cost or expense, including attorney's fees, incurred by any of them in causing the Title Insurer to issue the Leasehold Title Policy free and clear of such unpermitted exceptions.

C. Contemporaneously with the execution of this Lease, Landlord shall deliver to Tenant the opinion of Landlord's counsel, in the form and substance acceptable to Tenant and Tenant's counsel, that this Lease and all of the documents delivered by Landlord to Tenant at or in connection with the Lease were duly authorized, executed and delivered and are enforceable in accordance with their respective terms (subject to bankruptcy laws), that Landlord is duly organized, validly existing, in good standing, qualified to do business and has the power, authority and legal right to enter into this Lease and perform its obligations hereunder, and that said counsel has no knowledge or belief that any representation or warranty made by Landlord in this Lease or in any document delivered in connection with the Lease by Landlord to Tenant is untrue in whole or in part.

D. Contemporaneously with the execution of this Lease, Landlord shall deliver to Tenant, in the form and substance acceptable to Tenant and Tenant's counsel, an opinion letter of the attorney for the City that the Resolutions of the City, attached hereto as Exhibit B, guaranteeing Landlord's performance under this Lease were duly authorized, executed and delivered and create a binding, enforceable obligation of the City to guaranty the payment and performance of all obligations of the Landlord under this Lease.

6 USE OF THE PREMISES; COMPLIANCE WITH LAWS; CERTAIN RIGHTS AND RESPONSIBILITIES.

A. Tenant may at all times during the term of the Lease (i) use and occupy, and permit the use and occupancy of, the Property for any lawful purpose, including without limitation the construction, maintenance and operation of the Phase IV Project; and (ii) construct, alter, modify, demolish, remove, relocate, reconstruct, add to or otherwise deal with the Improvements at any time located on the Property.

B. Landlord shall promptly notify Tenant of Landlord's receipt of any governmental notice with respect to the Property or the Appurtenant Rights, including any notice of violation of any law, code or ordinance. Tenant shall have the right to contest by appropriate judicial or administrative proceedings the validity or application of any law, ordinance, order, rule, regulation or requirement requiring the repair, maintenance, alteration or replacement of the improvements, in whole or in part. Landlord shall, at Tenant's request, join in any such contest.

C. Landlord will consult with Tenant on all regulatory, administrative, contractual and judicial issues affecting the Property or Appurtenant Rights of any part thereof. Landlord shall not enter into or cooperate with any action, whether regulatory, administrative, contractual or judicial, that would affect the Property or Appurtenant Rights or any portion thereof without in each case the prior written consent of Tenant.

D. Landlord hereby irrevocably grants Tenant the absolute and exclusive right, power and authority from time to time, at Tenant's expense, to (i) enter into agreements restricting the use of the Property and other Appurtenant Rights or any part thereof; (ii) grant rights of way, easements and licenses over, across, along, under, in and through the Property or any part thereof (including but not limited to the absolute right, power and authority to grant to public entities or public service corporations, rights of way, easements and licenses in, on, across, along, over, under and through the Property for any purpose deemed necessary or desirable by Tenant in connection with Tenant's use, enjoyment and development of the Phase IV Project, including without limitation, railroad tracks, switches and lines, poles, conduits, tunnels and/or lines for telephone, electricity, water, gas, sanitary and/or storm sewers and for other utilities and municipal and/or special district services, for the purpose of serving the Property); and (iii) apply for and obtain zoning changes and conditional use permits, as Tenant deems desirable; and any of the foregoing instruments or interests Landlord executes or purports to create without Tenant's written consent shall be invalid. Landlord shall, at Tenant's request, join with Tenant in applications and proceedings to obtain necessary or desirable governmental permits, approvals and certifications, and use and zoning changes and join in any grant of easements or licenses over, across, under, along, in and through the Property and any other agreements Tenant deems necessary or desirable.

E. At all times during the term of this Lease, the following rights and responsibilities shall pertain:

(1) Landlord shall refer to Tenant without charge any inquiry made or interest expressed in connection with the purchase, licensing or leasing of the Property, the Appurtenant Rights, or any part thereof;

(2) Landlord shall take all actions necessary to prevent or terminate, as the case may be, any adverse or possessory claim or right to the Property, the Improvements or Appurtenant Rights or circumstance on which such claim or right can with the passage of time or otherwise be based, to begin, continue or mature, unless such claim or right is a Permitted Exception;

(3) Landlord shall immediately terminate any service contract of Landlord's which Tenant requests terminated so that Tenant and the Property, the Improvements and the Appurtenant Rights will have no liability with respect thereto;

(4) Landlord shall not modify, terminate, amend, assign or permit to lapse any agreement or instrument by which any of the Appurtenant Rights arise or which benefits the Property or any warranty, guaranty or right under contract, license, permit, privilege, franchise or concession used in connection with the Property, the Improvements or the Appurtenant Rights, including the contract and other documents pursuant to which Landlord acquired the Property (the "Purchase Documents");

(5) Any right, estate or interest in the Property, the Improvements or the Appurtenant Rights which Landlord attempts or purports to create shall be void and of no force or effect unless the prior written consent of Tenant is obtained;

(6) In no event may Landlord dump material or waste or place fill on the Property or any area affected by any Appurtenant Right, nor may Landlord grant to others the right to do so;

(7) Landlord shall not grant any option or right of first refusal or right of first opportunity to purchase the Property, the Improvements or the Appurtenant Rights or any part thereof, except to Tenant;

(8) If Landlord is notified that the Property, the Improvements or any area affected by any Appurtenant Right or any portion thereof is to be inspected by any government authority, Landlord shall immediately notify Tenant; and

## **7. REPAIR OF THE PHASE IV PROJECT.**

A. In the event of damage to or destruction of any of Improvements now or hereafter located upon the Property, by fire or other casualty, Tenant shall have the right, but no obligation, to repair, replace, restore or rebuild, at Tenant's own expense, any such Improvements so damaged or destroyed to the extent that Tenant shall deem necessary or desirable in connection with the requirements of Tenant's business. Upon the damage or destruction of any part of the Improvements which Tenant in its sole and absolute discretion deems to be significant, Tenant shall have the

right to terminate this Lease upon giving Landlord written notice of such intent not later than 360 days after the occurrence of said damage or destruction.

B. The damage to or destruction of any Improvement which does not result in the termination of this Lease by Tenant shall not release Tenant from any obligation hereunder.

## 8 CONDEMNATION.

If all or any part of the Property or Project shall be taken or condemned for any public or quasi-public use or purpose by any competent authority under any statute, or by right of eminent domain, or by private purchase in lieu thereof, then Tenant shall have the right, in Tenant's sole and absolute discretion, to terminate this Lease by giving written notice to Landlord of Tenant's intent to terminate not later than 180 days after possession of that portion of the Property so taken has been taken or surrendered. Landlord shall promptly notify Tenant of Landlord's receipt of any notice of intent to exercise the police power or any similar notice, or the institution of any proceedings for the condemnation of the Property or any portion thereof Tenant shall be entitled to collect, and Landlord hereby assigns to Tenant, the proceeds of any condemnation award attributable to the Improvements situated on the Property.

## 9 TENANT'S RIGHT TO NEGOTIATE PURCHASE OPTION.

A. At any time during the term of this Lease, Tenant or any transferee or assignee shall have the right and option to negotiate an option to purchase the Premises or any part thereof the "Purchase Option"). The option shall be negotiated in good faith between the parties, but shall contain as terms and conditions the following: Tenant or any transferee or assignee, as the case may be, shall exercise the Purchase Option by written notice (the "Notice") given to Landlord at any time and from time to time during the term of this Lease, but in no event later than ten (10) days prior to the date Tenant or any transferee or assignee desires the closing to occur. The Notice shall set forth the date for closing (the "Closing Date"), which shall not be earlier than ten (10) days from the date of the Notice. In the event the parties enter into the Purchase Option and in the event that Tenant or any transferee or assignee elects to exercise the Purchase Option in accordance with the terms hereof, the purchase price for the Premises shall be One Dollar and No/100 Dollar (\$1.00) per tract, for an aggregate purchase price of Two and No/100 Dollars (\$2.00) (the "Purchase Price"). The Purchase Price shall be payable on the earliest to occur of (i) the Closing Date, or (ii) the Termination Date. In the event the parties enter into the Purchase Option and the Purchase Option set out herein has not been exercised prior to the Termination Date, such Purchase Option shall be deemed automatically exercised by Tenant on the Termination Date and the Closing Date shall be the date which is thirty (30) days after the Termination Date.

In the event the parties enter into the Purchase Option and Tenant exercises the Purchase Option, upon Tenant's request Landlord agrees to subdivide or cause to be subdivided in such manner as Tenant deems necessary and at Landlord's sole cost, the Property, as necessary.

B. Upon payment of the Purchase Price by Tenant or any transferee or assignee, fee simple title to the Premises shall automatically vest in Tenant or its transferee or assignee subject

only to the Permitted Exceptions, without the necessity of any further action from Landlord. In confirmation of said vesting, Landlord does hereby grant, convey and warrant unto Tenant fee simple title to the Property and Improvements, and Landlord does hereby assign unto Tenant all of Landlord's right, title and interest in the Appurtenant Rights; further provided, however, that Landlord shall take such other actions and execute such other documents and instructions as may be necessary or required to confirm and further evidence the conveyance to Tenant or any transferee or assignee, including without limitation, the due execution, acknowledgment where required, and delivery by Landlord to Tenant of the following documents, which execution and delivery shall be a condition precedent to Tenant's obligation to close:

(1) a duly acknowledged recordable Statutory Warranty Deed in the form of Exhibit C attached hereto and made a part hereof executed by Landlord as grantor, conveying marketable fee simple title to the Property and the Improvements to Tenant or such other person or entity as Tenant shall direct; said Statutory Warranty Deed being subject only to the Permitted Exceptions;

(2) a regular form quitclaim Bill of Sale executed by Landlord conveying to Tenant (or such person or entity as Tenant shall direct) all of such personal property on the Property;

(3) an assignment to Tenant executed by Landlord, of any of the service and construction contracts and any other agreements relating to the Property, the Improvements or the Appurtenant Rights which Tenant requests to have assigned to it;

(4) a blanket assignment and/or deed to Tenant (and/or a specific assignment if requested by Tenant) executed by Landlord, of any quitclaims, warranties, guarantees and rights under contracts, licenses, permits, franchises, privileges, telephone numbers or concessions held by Landlord, with respect to the Property, the Improvements or the Appurtenant Rights, including the Purchase Documents;

(5) completed real estate transfer declarations or exemptions of the State of Alabama and the County executed by Landlord;

(6) a duly acknowledged recordable statutory warranty deed and assignment executed by Landlord (or such personal or entities as Tenant shall direct) as grantor whereby Landlord (or such persons or entities) grants, bargains, sells and conveys to Tenant (or such person or entity as Tenant shall direct) such of the Appurtenant Rights as Tenant shall specify;

(7) a copy certified by the appropriate officers of Landlord, of corporate resolutions authorizing the execution of this Lease, the sale of the Property, Improvements and Appurtenant Rights, and the execution of each document delivered or to be delivered by Landlord in connection herewith, and Landlord's respective performance pursuant thereto, together with said official's current certificate that such resolutions have not been amended or rescinded;



(8) the certificate of Landlord's Secretary as to the officers of Landlord as of the Closing Date, providing specimen signatures of the officers and stating either the expiration of the terms of said officers or that their terms do not expire within thirty (30) days of the Closing Date;

(9) the opinion of Landlord's counsel, in form and substance acceptable to Tenant and Tenant's counsel, that this Lease and all of the documents delivered by Landlord at or in connection with the closing were duly authorized, executed and delivered and are enforceable in accordance with their respective terms (subject to bankruptcy laws, and excluding any indemnifications made by Landlord), that Landlord is duly organized, validly existing, in good standing, qualified to do business and has the power, authority and legal right to enter into this Lease and perform its obligations hereunder, and that said counsel has no knowledge or belief that any representations of warranty made by Landlord in this Lease or in any document delivered at or in connection with closing by Landlord to Tenant are untrue in whole or in part; and

(10) an owner's title insurance policy (the "Owner's Title Policy") issued to Tenant as owner pursuant to and in accordance with the Owner's Title Commitment described in Section 9.D. below or as otherwise required in this Agreement.

Acceptance by Tenant of any assignment or conveyance provided for in the foregoing documents shall not constitute Tenant's acceptance or assumption of any obligation.

D. In the event the parties enter into the Purchase Option and in the event that Tenant or any transferee or assignee exercises the Purchase Option at any time, Landlord shall, within 10 days of receipt of each Notice, at its own cost and expense, deliver to Tenant or any transferee or assignee a commitment for an ALTA Owner's Policy (Form B 1970) of Title Insurance in the amount of the total cost of the Phase IV Project (the "Owner's Title Commitment") issued by a Title Insurer acceptable to Tenant, showing fee simple title to the Property and the Improvements and title to such other of the Appurtenant Rights as Tenant shall designate to Landlord to be vested in Landlord, subject only to the Permitted Exceptions, and committing to insure title in Tenant or any transferee or assignee of Tenant upon the date set forth in the Notice for the consummation of the purchase and sale, which Owner's Title Commitment shall include the coverages set forth in Section 5.A.(iv), (v) and (vi) above. In connection with the exercise of the Purchase Option, Landlord shall pay at or prior to the closing (i) the entire cost of each such title commitment and the entire cost of the Owner's Title Policy issued pursuant thereto, (ii) the entire cost of any survey in connection therewith, and (iii) all other costs and expenses associated with any transfer pursuant to exercise of the Purchase Option, including without limitation, all recording costs and expenses and all documentary or other taxes or fees incurred in connection with such conveyance.

E. (1) If the Owner's Title Commitment discloses one or more exceptions relating to title other than the Permitted Exceptions, Landlord shall use its best efforts and due diligence to have each such unpermitted exception released or satisfied or insured over by the Title Insurer to Tenant's satisfaction. If Landlord fails to have such unpermitted exception either removed or insured over to Tenant's satisfaction and to give conclusive evidence thereof to Tenant within thirty (30) days from the date such Owner's Title Commitment was delivered to Tenant, Tenant may (i) cancel

its exercise of the Purchase Option, in which event at Tenant's election the Lease shall remain in effect, or (ii) elect, upon notice to Landlord within thirty (30) days after the expiration of said 30 day period, to take title as then shown on the extent Owner's Title Commitment with the right to deduct from the purchase price the cost of causing the Title Insurer to insure over such exceptions and liens of a definite or ascertainable amount, including the premium on any surety bond required by the Title Insurer, and the right to obtain extended coverage over the general exceptions aforesaid. Landlord shall pay to Tenant on demand the amount by which the foregoing costs exceed the purchase price.

(2) Further, Landlord hereby indemnifies and holds harmless Tenant, its transferees and assigns and their respective successors from and against any loss, cost or expense, including attorneys' fees, incurred by any of them in causing the Title Insurer to issue its policy free and clear of such unpermitted exceptions. The Closing Date shall be the later of the date otherwise provided herein or ten (10) days after the acceptance or perfection of title as provided herein.

F. If for any reason, including without limitation unconstitutionality, bankruptcy or incapacity, either Landlord or the City defaults or otherwise fails to perform under its respective obligations under this Lease or its performance shall be challenged in a court of law as ineffective, illegal, ultra vires, unconstitutional or otherwise improper, then Tenant shall have the right and option exercised by notice to Landlord to such effect, (i) provided the parties have entered into the Purchase Option, to have the Purchase Option and Tenant's purchase of the Property consummated by a direct transfer from Landlord to Tenant of marketable fee simple title to the Property, Improvements, Appurtenant Rights, personal property and all other rights and interest transferable under this Section 9 on the same terms as herein provided ("Option A"); and/or (ii) provided the parties have entered into the Purchase Option, to cancel its exercise of the Purchase Option in that instance without prejudice to any future right to exercise the Purchase Option; and/or (iii) to create a new right and option to extend the term of this Lease for an additional ten (10) years (the "Extension Option"); and/or (iv) to exercise such other rights and remedies as may be available to it under this Lease, at law or in equity. If it shall be judicially determined that the purchase price shall be insufficient as a matter of Alabama law to permit one or more of the effective conveyances herein provided for under the option of Option A, then before or after all applicable appeal periods shall have run, Tenant shall have the further right, at its election exercised by notice to Landlord to such effect (i) to agree to pay as a purchase price such minimum amount as shall obviate such legal impediment, (ii) to cancel its exercise of Option A in that instance without prejudice to any future right to exercise Option A, (iii) to exercise the Extension Option, and/or (iv) to exercise such other rights and remedies as may be available to it under this Lease, at law or in equity.

G. If Option A is exercised, Landlord shall cooperate with Tenant to effect the delivery of marketable fee simple title to Tenant to the Property (subject only to the Permitted Exceptions), the Improvements, the Appurtenant Rights, personal property and all other rights and interest transferable under this Section 9 on the terms as are herein contemplated. If the Extension Option is exercised, then the Lease shall be deemed amended by adding a new Section 2.C. as follows:

“C. Tenant shall have the further right and option to further extend the term of this Lease for an additional ten (10) consecutive years. Unless Tenant provides Landlord with written notice of its intent not to extend the term for said additional ten (10) year period, this Lease shall be automatically extended for an additional period of ten (10) years upon the same terms and conditions as herein contained, except that the Term shall include said ten year period and shall terminate and be rendered null and void as of 11:59 p.m. on the day immediately preceding the twentieth (20th) anniversary of the Commencement Date).”

10. DELIVERY OF POSSESSION.

At the Commencement Date, actual, complete and exclusive possession of the Property shall be delivered by Landlord to Tenant free and clear of all liens, claims, charges, contracts, rights, tenancies or encumbrances of any kind or nature, other than the Permitted Exceptions. During the term of this Lease, Tenant shall have full access to the Property and the Appurtenant Rights for the purpose of constructing the Phase IV Project, and to the extent not otherwise set out in this Lease, Tenant is hereby granted such licenses, easements and rights of access by Landlord necessary to complete the construction of the Phase IV Project.

11. ENVIRONMENTAL COMPLIANCE AND INDEMNITY.

A. Landlord represents and warrants that to the best of Landlord's knowledge, and except as provided in any written environmental report with respect to the Property delivered to or obtained by Tenant prior to the Commencement Date, as of the Commencement Date, (i) the Property and the operation thereof are not, nor is any part thereof, under investigation with respect to, and the Property is not and has never been (and no part of the Property is or ever has been) in violation of, any Environmental Law (a such term is herein defined), nor is any such investigation or violation threatened, (ii) no proceedings have been commenced against, nor has any notice or threat been received by Landlord or any of its Related Parties (as such term is herein defined) concerning the alleged violation of any Environmental Law in respect of the Property, (iii) the Property has never been the subject of any threatened, proposed or actual cleanup or other protective, removal or remedial action relating to any Hazardous Substance (as such term is herein defined), whether pursuant to any Environmental Law or otherwise, (iv) there are no Hazardous Substances in, on, under or about the Property, (v) no release, leak, spillage, seepage, escape, leach, discharge, injection, emission, pumping, pouring, emptying, dumping, or filtration of any Hazardous Substance is occurring or has occurred in, on, under, about or from the Property, and no migration of any Hazardous Substance is occurring or has occurred from other property onto, into, in, on, under or about the Property, (vi) the Property is not being used, and the Property has never been used for any generation, manufacture, emission, refining, production, processing, treatment, storage, handling, transportation, transfer, use or disposal of any Hazardous Substance in, on, under, about or from the Property, and (vii) the Property is not listed in the United States Environmental Protection Agency's National Priorities List of Sites or any other list, schedule, log, inventory or record of Hazardous Substances or hazardous waste sites, whether maintained by the United States Government or any local agency.

B. To the maximum extent not prohibited by law, Landlord agrees to, shall and does hereby protect, indemnify and hold harmless Tenant and Tenant's Related Parties from and against, and reimbursed Tenant and Tenant's Related Parties for, each and every loss, damage, fine, penalty, cost, expense (including without limitation attorneys' fees, court costs, litigation, investigation, consulting, sampling and claim preparation expenses of all kinds and expert fees), judgment, assessment, claim, suit, proceeding, demand, liability and remedial or mitigation expense which may be imposed upon, asserted against or incurred or paid by Tenant or Tenant's Related Parties, by reason of or in connection with any of the following, including without limitation any claim or assertion (other than by Tenant) to one or more of the following effects: (i) the breach of this Lease, the breach of any covenant, representation or warranty of Landlord set forth in this Lease, or any agreement entered into pursuant hereto, or any claim or assertion (other than by Tenant) inconsistent with any such covenant, representation or warranty; (ii) any violation by Landlord or any of Landlord's Related Parties of any Law or Environmental Law; (iii) the presence of any Hazardous Substance in, on, under or about all or any part of the Property either existing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option, or attributable or related to any event or events, circumstances, release or occurrences commencing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option, or caused or permitted in whole or in part by Landlord or any of Landlord's Related Parties; (iv) any release, leak, spillage, seepage, migration, escape, leach, discharge, injection, emptying, dumping or filtration of any Hazardous Substance Area either related or attributable to one or more events, circumstances or occurrences, excluding migration caused by Tenant from the adjacent property owned by Tenant, commencing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option, or caused or permitted in whole or in part by Landlord or any of Landlord's Related Parties, (v) any lien, injury to person, death or damage to or destruction of property directly or indirectly, wholly or partially, due to any act or omission of Landlord or any of Landlord's Related Parties, and (vi) any Hazardous Substance migrating or emanating onto, into, under or above all or any part of the Property as a result of any condition or circumstance commencing on or before the closing of the purchase of the Property pursuant to exercise of the Purchase Option on any other property, including without limitation and in addition, any Hazardous Substance present on lands in proximity to the Property, including without limitation those lands in Madison County adjacent to the Property. As used herein, "Related Parties" means each and every person, firm, corporation, trust, partnership, company, governmental or quasi-governmental body, agency, officer, authority, body politic or entity of any kind, association or other collective group or entity of any kind directly or indirectly having one or more of the following relations with Landlord or with Tenant as the context indicates, namely, employee, officer, director, trustee, board member, commissioner, chief executive officer, agent, contractor, licensee, vendor, supplier, lender, partner, attorney, subtenant, co-tenant, co-participant, shareholder, owner, successor, assign, subsidiary and instrumentally, of all tiers, so that, for example and without limitation, an employee of any agent of Tenant shall be included within Tenant's "Related Parties", as shall the agent.

C. Not later than the Commencement Date Landlord shall obtain and deliver to Tenant all necessary environmental statements and other approvals for the transactions contemplated hereby required by the City of Huntsville or any of its agencies, officials or instrumentalities (collectively, the "City"), and not later than the Commencement Date Landlord shall deliver to Tenant

any and all environmental impact statements, statements of negative declaration or such other notices and statements relating to environmental matters as shall be required by the City with regard to the lease of the Property pursuant to any City law or requirement applicable thereto.

D. For purposes of this Lease, the term "Environmental Law" shall mean any federal, state or local, current or future legal requirement pertaining to (i) the protection of health, safety, and the indoor or outdoor environment, (ii) the conservation, management, or use of natural resources and wildlife, (iii) the protection or use of surface water and groundwater, (iv) the storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, and Hazardous Substance or (v) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, that Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 USC 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., Hazardous Materials Transportation Act, 49 USC App. 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 USC 651 et seq., Oil Pollution Act of 1990, 33 USC 2701 et seq., Emergency Planning and Community Right-To-Know Act of 1986, 42 USC 11001 et seq., National Environmental Policy Act of 1969, 42 USC 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 USC 300(f) et seq., and similar, implementing or successor law, and any amendment, rule, regulation, order, or directive issued thereunder. For purposes of this Lease, the term "Law" shall mean and refer to any law, regulation, rule, ordinance, code, order and direction, and the payment of all taxes, permits, licenses or contract conditions, assessments, fees or charges imposed or enforced or enforceable by or issued under the authority of any government or governmental entity or agency, including without limitation, all departments, commissions, boards, authorities, courts, officials and officers thereof.

E. For purposes of this Lease, the term "Hazardous Substance" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or hazardous or toxic material, and includes, without limitation, (i) asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof) and (ii) any such material classified or regulated as "hazardous" or "toxic" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., "hazardous chemical," "extremely hazardous chemical" or "toxic chemical" defined or regulated under the Emergency Planning and Community Right-To-Know Act, 42 USC 11001 et seq., any "waste," "solid waste" or "hazardous waste" defined or regulated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 USC 6901 et seq., and any chemical, pollutant or contaminant defined or regulated under the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic

Substances Control Act of 1976, 15 USC 2601 et seq., or Hazardous Materials Transportation Act, 49 USC App. 1801 et seq.

F. If Landlord or any of its Related Parties shall (i) receive notice that any violation of any law may have been or is threatened to be committed by Landlord or any of its Related Parties as a result of any activity concerning any Hazardous Substance, (ii) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed against Landlord or any of its Related Parties alleging any violation of any law as a result of such activity, or requiring Landlord or any of its Related Parties to take any action in connection with any such activity, or (iii) receive any notice from a federal, state or local governmental agency alleging that Landlord or any of its Related Parties may be liable or responsible for costs associated with a response to or clean-up of a release or disposal of any Hazardous Substance or any damages caused thereby, including, without limitation, any notice that Landlord, or any of its Related parties is a "potentially responsible party," as defined in CERCLA (42 U.S.C. § 9601 et seq.), Landlord shall immediately give Tenant notice of same and provide Tenant with a copy of any such notice within five (5) days after Landlord's or one of its Related Parties' receipt thereof.

G. In the event that any of the representations or warranties set forth in Section 11.A. above is breached or is otherwise untrue or rendered untrue in any respect as it pertains to any portion of the Property, or in the event that Landlord or any of its Related Parties notifies Tenant of any of the circumstances or events set forth in Section 11.F. above, Tenant shall have the right to (i) terminate this Lease by giving written notice to Landlord, or (ii) exclude from the Premises any portion of the Property in respect of which said representation or warranty has been breached or rendered untrue or such notice pertains. In the event Tenant elects to exclude any portion of the Property from the Premises pursuant to the terms of this section, Landlord shall retain title to said portion of the Property and shall in an expeditious manner implement such remedial action and pay all costs as are necessary or required to (i) cure the breach of the representation or warranty and render it true in all respects, (ii) cure any violation of law relating to any activity concerning any Hazardous Substance, and (iii) satisfy in full all costs associated with a response to or clean-up of a release or disposal of any Hazardous Substance or any damage caused thereby, so as to effect the unconditional withdrawal of any notice identified in Section 11.F. above or dismissal of any action or proceeding relating thereto. Landlord shall not permit said portion of the Property to be subject to any lien under any Environmental Laws. Upon completion of the remediation, payment of costs and full performance of all other acts set forth in the second sentence of this Section 11.G., Landlord shall give notice to Tenant thereof, and Tenant may, at Tenant's sole and absolute discretion, elect to have said portion of the Property included within the Premises. Landlord's indemnity as set forth in Section 11.B. above shall continue in full force and effect in favor of Tenant in respect to the entire Property, notwithstanding that a portion thereof may have been excluded from the Premises.

H. Landlord shall perform, or cause to be performed, any and all remedial actions and shall pay all costs and expenses related thereto (including without limitation, costs of investigation and technical consultants) necessary to deliver the Premises to Tenant in full compliance with all Environmental Laws and will take such further actions as may be required to be taken in the future to fully investigate, remediate and clean up any and all environmen

contamination or pollution existing on the Commencement Date so as to render the Premises in full compliance with all Environmental Laws. All such remediation shall be conducted by Landlord in such a manner as will not interfere in any way with the operation of the Phase IV Project.

I. Sections 11.A. through 11.I. shall survive the exercise of the Purchase Option (in the event the parties have entered into the Purchase Option), the closing pursuant thereto, the delivery and recording of the deed, the subleasing of the Property or any portion thereof, the assignment, expiration or termination of the Lease and all other events, without termination or diminution.

J. Landlord hereby approves the issuance of pollution control bonds, if requested by Tenant in its sole discretion, and the debt instruments of Tenant, if any, and agrees to take all actions necessary to issue pollution control bonds and to execute all documents necessary in connection therewith.

## **12. TAXES.**

Landlord shall pay when due all real property, ad valorem or other taxes or assessments (collectively, "Taxes") accruing on or before the Commencement Date, and Tenant shall pay all Taxes accruing after such date and prior to the expiration or earlier termination of this Lease for which no exception is granted. Landlord shall promptly notify Tenant of any proposed change in any Tax which could in any manner affect Tenant, the property or improvements. Tenant shall have the right to contest any such change. If any tax bill shall include both the Property and other property, Landlord shall cause the portion thereof allocable to the other property to be timely paid to the taxing authorities or to Tenant.

## **13. LEASEHOLD MORTGAGE.**

A. Tenant shall have the right, at any time, and from time to time during the term of this Lease, upon notice to the Landlord, to subject Tenant's leasehold estate and title to any or all buildings or improvements now, or at any time hereafter, located or placed on the Premises, to a "Leasehold Mortgage" (as such term is herein defined), without Landlord's consent. If either Tenant or the mortgagee under the Leasehold Mortgage shall give notice to Landlord of the existence thereof and the address of such mortgagee, such mortgagee shall become a "Leasehold Mortgagee" for the purposes of this Lease (which term shall include the successors and assigns of any Leasehold Mortgagee, and, where the context warrants, any person, entity or authority that acquires Tenant's interest in this Lease or the Phase IV Project or both, in connection with any foreclosure, assignment in lieu of foreclosure or other proceedings to enforce any Leasehold Mortgage). The provisions of this section are for the benefit of each Leasehold Mortgagee and shall be enforceable by each Leasehold Mortgagee.

B. The term "Leasehold Mortgage" as used herein include (i) any mortgage, deed of trust, assignment in trust, deed or assignment to secure a debt conditional or collateral assignment or security instrument by which Tenant's interest in this Lease or the Phase IV Project, or both, is mortgaged, conveyed, assigned, pledged, hypothecated or otherwise transferred to secure a debt

or other obligation, and (ii) any other agreement or instrument by which any other type of financing arrangement (including without limitation, a pledge of stock, partnership interests or other ownership interests or such partnership arrangements as shall be employed for the purpose of financing or as security therefor) is secured or evidenced.

C. The term "Leasehold Mortgage" shall include (i) the holder or beneficiary of any Leasehold Mortgage, (ii) the holder or beneficiary of any such other agreement or instrument by which such other type of financing arrangement is evidenced or secured, as the case may be, and (iii) in each case, any assignee of any holder or beneficiary to which such interest has been assigned.

D. If Tenant defaults in the performance of its covenants and obligations under any Leasehold Mortgage, and the Leasehold Mortgagee thereunder acquires Tenant's leasehold estate and title to any or all of the buildings and other improvements, whether pursuant to power of sale, by judicial foreclosure or by an assignment in lieu of foreclosure, Landlord agrees to waive all past defaults occurring prior to the date the Leasehold Mortgagee acquires title to such estate or interest.

E. Landlord expressly acknowledges and agrees that no Leasehold Mortgagee shall be responsible or liable, in any way, for the subleasing of all, or any part, of the Premises, or for the collectability, collection or non-collection of any rent or other income from the operation of the Project, nor shall any Leasehold Mortgagee be required to make an accounting to or for the benefit of Landlord, Landlord hereby expressly waiving, and releasing any and all such Leasehold Mortgagees from any such responsibility or liability.

F. If Tenant shall elect to subject its leasehold estate and title to any or all of the buildings or other improvements now, or at any time hereafter, located or placed upon the Premises to any Leasehold Mortgage, and thereafter, Tenant defaults in the payment of any Rent or the performance of any covenant under this Lease, then Landlord shall promptly give to any and all said Leasehold Mortgagees, written notice of such default and the Leasehold Mortgagee shall, at its option and upon written notice thereof given to Landlord within 180 days after the expiration of any grace or curative period permitted to Tenant under this Lease in respect to such default, have the right:

(1) to cure or correct such default within 180 days after the expiration of any such grace or curative period so permitted to Tenant or within such additional period of time as may be necessary or required to correct or cure such default, but only if the Leasehold Mortgagee commences to eliminate the cause of such default within said 180 days and proceeds diligently and with reasonable dispatch to take all steps and do all work to correct or cure such default; or

(2) to cause the initiation of foreclosure proceedings (if Leasehold Mortgagee does not elect to cure or correct such default, or such default cannot be cured or corrected) within 180 days after the expiration of any such grace or curative period so permitted to Tenant, to prosecute such proceedings diligently to conclusion and to perform and comply with all other covenants and conditions of this Lease until the leasehold estate and title to any or all buildings or



other improvements shall be released or reconveyed from the Leasehold Mortgage or until the leasehold estate and title to any or all of the buildings or other improvements shall be transferred or assigned pursuant to or in lieu of foreclosure or the exercise of the power of sale; or

(3) to purchase from Landlord all of Landlord's right, title and interest in, to and under the Property, the Improvements and the Appurtenant Rights pursuant to the Purchase Option described in Section 9 of this Lease, at the price set forth therein, in which case the purchase shall be consummated within thirty (30) days after the Leasehold Mortgagee has provided Landlord with written notice of said election and Landlord shall convey to the Leasehold Mortgagee, or its nominee, all of Landlord's right, title and interest in, to and under the Property, the Improvements and the Appurtenant Rights, by Statutory Warranty Deed in the form of Exhibit C attached hereto, subject only to (i) the Permitted Exceptions, (ii) this Lease and (iii) the rights of Tenant hereunder and all acts done or suffered by, through or under Tenant.

G. If any Leasehold Mortgagee shall elect to exercise the right granted pursuant to Section 12.F.(2) or 12.F.(3) above, then Landlord shall not institute any suit, action or other proceeding to enforce the rights and remedies conferred upon Landlord under this Lease pending the conclusion of the foreclosure proceedings or the purchase, whichever is the case.

H. No Leasehold Mortgagee shall be liable for the performance of Tenant's covenants, agreements and obligations under this Lease until such Leasehold Mortgagee acquires Tenant's interest in the leasehold estate by foreclosure or otherwise. No Leasehold Mortgagee shall be required to cure or correct any of Tenant's defaults under this Lease occurring or existing prior to the acquisition by such Leasehold Mortgagee of Tenant's leasehold estate, and its rights and interests under this Lease, by foreclosure or otherwise.

I. In the event that any Leasehold Mortgagee shall acquire Tenant's leasehold estate, by reason of foreclosure or otherwise, then, in such event, Landlord shall enter into a new lease with such Leasehold Mortgagee covering the Premises, provided that such Leasehold Mortgagee shall, in writing, request such new lease within thirty (30) days after such acquisition. The new lease shall be for a term commencing on the date of acquisition and terminating on the date this Lease would have expired but for the acquisition, and otherwise shall be upon the same covenants, agreements, conditions, including any termination and purchase options herein contained.

#### **14. ENCUMBRANCES BY LANDLORD.**

A. Landlord represents and warrants that as of the Commencement Date, the Property and the Appurtenant Rights are free and clear of all contractual liens, security interest, mortgages and encumbrances.

B. During the term of this Lease, Landlord shall not grant, give or permit, or allow or suffer any mortgage, deed of trust, assignment in trust, deed or assignment to secure a debt, conditional or collateral assignment or security instrument by which Landlord's interest in this Lease or the Property or the Improvements or the Appurtenant Rights or all of the foregoing, is

mortgaged, conveyed, assigned, pledged, hypothecated or otherwise transferred to secure a debt or other obligation.

15. UTILITIES.

Tenant shall pay all charges for water, gas, electricity, power, and all other utility services which may be delivered to the Premises and consumed by Tenant during the term of this Lease. Landlord acknowledges and agrees that nothing herein contained shall be deemed to release, modify or affect in any manner any obligation to pay for and/or provide utility services set forth in any other separate agreement.

16. QUIET ENJOYMENT.

Landlord hereby represents and warrants to, and covenants with, Tenant that Landlord is well seized of, and has good title to, the Premises, subject only to the Permitted Exceptions and has all requisite power and authority to enter into this Lease. Landlord covenants that Tenant shall have the peaceful use and quiet enjoyment of the Premises during the term of this Lease, without hindrance on the part of Landlord, and that Landlord will warrant and defend the lawful claims of all persons claiming by, through or under Landlord, and will indemnify Tenant against any and all loss, damage and expense Tenant may suffer, incur or sustain by virtue of any such claim, or any lien, encumbrance, restriction or defect in title to or description of the Premises, during the term of this Lease.

17. INDEMNIFICATION.

A. To the maximum extent permitted by law, Landlord agrees to, shall and does hereby protect, indemnify and hold harmless Tenant and Tenant's Related Parties from and against, and reimburses Tenant and Tenant's Related Parties for, each and every loss, damage, fine penalty, cost expense (including without limitation attorney's fees, court costs, litigation, investigation, consulting, sampling and claim preparation expenses of all kinds and expert fees), judgment, assessment, claim, suit, proceeding, demand, liability and remedial or mitigation expense which may be imposed upon, asserted against or incurred or paid by Tenant or Tenant's Related Parties, by reason of or in connection with any of the following, including without limitation any claim or assertion (other than by Tenant) to one or more of the following effects: (i) any accident or injury to or death of any persons, or loss of or damage to property occurring upon or around the Property, or any part thereof, caused by any act of Landlord or any of Landlord's Related Parties or otherwise in connection with the performance of Landlord's obligations by parties other than Tenant, or (ii) the performance of any labor or services, or the furnishing of any materials or property in connection with the construction, maintenance, repair or relocation of the Improvements being constructed upon the Property by or for Landlord; or (iii) any use, non-use, possession, occupation, repair, alteration, condition, operation or maintenance of the Property by Landlord, or any of Landlord's Related Parties, or (iv) any act or negligence on the part of Landlord or on the part of anybody claiming an interest in the Property or the Improvements or any other Appurtenant Right or any part thereof or any appurtenances thereto under or through Landlord or its Related Parties (other than Tenant or its Related Parties), or (v) any failure on the part of Landlord to keep, observe, perform or comply with

any of the other terms, covenants, agreements or conditions contained in this Lease or in any other agreement affecting the Property, on Landlord's part to be kept, observed, performed or complied with, or any inaccuracy in any representation or warranty made by Landlord in this Lease, except for any obligation of the County under the Project Diamond Agreement. This Section 17.A. shall survive the exercise of the Purchase Option, the closing pursuant thereto, the delivery and recording of the deed, the subleasing of the Property or any portion thereof, the assignment, expiration or termination of the Lease and all other events, without termination or diminution.

B. Except as otherwise provided in Sections 11.B. and 17.A. hereof, Tenant will indemnify and hold harmless, Landlord from and against all liabilities, obligations, claims, damages, costs and expenses imposed upon or incurred by or asserted against Landlord by reason of any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property or any part thereof as a result of the operation of the Phase IV Project during the term of this Lease, excluding any of the foregoing resulting from or contributed to by the act or omission of Landlord or any of Landlord's Related Parties. In case any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant will, at Tenant's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended.

C. At all times during the term of this Lease, Landlord, Landlord's Related Parties and any other person or entity who performs an obligation or work on Landlord's behalf shall be required to conform and adhere to all of Tenant's rules and regulations with respect to the Phase IV Project, including but not limited to Tenant's construction site rules and regulations.

## **18. ASSIGNMENT AND SUBLETTING.**

A. Tenant shall have the absolute right to assign or otherwise transfer Tenant's interest in this Lease and the leasehold estate hereby created to:

- (1) any Leasehold Mortgagee in lieu of the exercise of the power of sale or of foreclosure;
- (2) any subsidiary, affiliate or successor of Tenant; or
- (3) any corporation resulting from the merger, reorganization or consolidation of Tenant, or any corporation, entity or person acquiring all or substantially all of the property and assets owned and used by Tenant in the operation of the Phase IV Project.

B. For purposes of this Section, the following terms shall have the following meanings:

- (1) The term "affiliate" shall mean and refer to any corporation which, directly or indirectly, controls or is controlled by or is under common control with Tenant. For this purpose, "control" shall mean the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

(2) The term "subsidiary" shall mean and refer to any corporation not less than fifty percent (50%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Tenant.

(3) The term "successor" shall mean and refer to:

(a) any corporation into or with which Tenant, its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation, the liabilities of the corporations participating in such merger or consolidation are assumed by the corporation surviving such merger or created by such consolidation; or

(b) any corporation acquiring this Lease and a substantial portion of the property and assets of Tenant, its corporate successors or assigns.

C. Upon the assignment or other transfer of Tenant's interest in this Lease and the leasehold estate created hereby, in accordance with Section 18.A., Tenant shall be discharged from any and all further liability and obligation under this Lease.

D. Tenant shall have the absolute right to sublet all or any portion of the Premises or the improvements now or hereafter located thereon, or both, and to assign, encumber, extend, or renew any sublease, provided that:

(1) Each sublease shall contain a provision requiring subtenant to attorn, upon request, to Landlord or, in the event of any proceeding to foreclose any Leasehold Mortgage, to the Leasehold Mortgagee, or any person designated in a notice from the Leasehold Mortgagee, if Tenant defaults under this Lease and if the subtenant is notified of Tenant's default and instructed to make subtenant's rental payment to Landlord or the Leasehold Mortgagee or such other designated person; and

(2) Tenant shall promptly after execution of the sublease, notify Landlord of the name and address of the subtenant.

## 19. SURRENDER.

A. Upon the termination of this Lease by lapse of time or otherwise and within 180 days thereafter, Tenant shall have the right to:

(1) abandon any and all buildings and other improvements, together with all fixtures and equipment attached or appurtenant thereto, then located upon the Premises, in which case any and all such buildings and other improvements shall then become the property of Landlord free and clear of any interest of Tenant; or

(2) (a) remove any and all such buildings and other improvements, together with all fixtures and equipment attached to or appurtenant thereto from the Premises;

and (b) conduct an auction, liquidation or other sale of any of the foregoing;

(c) exercise the Purchase Option pursuant to Section 9 hereof.

B. In the event that Tenant elects not to exercise the Purchase Option pursuant to Section 9 hereof, Tenant shall, at the termination of the term of this Lease, by lapse of time or otherwise and subject to the rights of survival set forth in Section 19.A., yield up immediate possession of the Premises to Landlord. It is the express understanding of Landlord and Tenant that Tenant shall not be obligated to restore the Premises to the condition as existed at the Commencement Date. Tenant shall not be obligated to remove any utility services installed over, upon or across the Premises at the direction of Tenant, or any streets, roadways, parking lots, railroad tracks, switches or other improvement or change any other physical aspect of the Premises upon the vacation of the Premises by Tenant. Upon vacation of the Premises by Tenant at the termination of this Lease, ownership of the buildings and other Improvements remaining on the Premises shall vest in Landlord.

## 20. INSURANCE.

A. At all times during the term of this Lease, Tenant shall carry and keep in force all insurance required to be maintained by applicable state and federal law and such other insurance as it deems necessary to cover any and all liabilities which may occur by reason of its occupancy of the Premises. Tenant shall cause its insurers to name Landlord as an additional insured on any policy of liability insurance maintained by Tenant.

B. Upon written request by Tenant from time to time, and at Tenant's expense, Landlord shall provide and maintain during the term of this Lease for the mutual benefit of Landlord and Tenant, a policy or policies of comprehensive general public liability insurance, including contractual liability, with minimum limits of no less than \$3,000,000.00 with respect to injury or death to any one person, \$5,000,000.00 with respect to any one occurrence, and \$2,000,000.00 with respect to property damage arising out of any one occurrence, which policy or policies shall:

(1) Name as additional insureds Tenant and Tenant's officers, directors, shareholders, agents, and employees, and such other persons as Landlord may designate;

(2) Be written by solvent and responsible insurance companies acceptable to Tenant;

(3) Provide that such policy or policies may not be canceled by the insurer without first giving Tenant at least thirty (30) days prior written notice;

(4) Protect and insure Landlord and Tenant on account of any loss or damage arising from (i) injury or death to persons or damage or destruction to property caused by or related to (a) any demolition, construction or reconstruction that Landlord may perform or may have performed in connection with the Property; or (b) any act or omission of Landlord or any

of Landlord's Related Parties on any portion of the Property; and (ii) any breach of Landlord's indemnities under this Lease;

and Landlord shall deliver certificates (using Form ACORD 27) or memoranda (in form and substance satisfactory to Tenant) of such policies of insurance to Tenant; provided that in the event Landlord shall fail to provide and maintain such insurance, Tenant may, but shall not be obligated to, in addition to any other remedies provided for herein, cause such insurance to be issued covering Tenant, its officers, agents and employees and Tenant shall have the right to deduct the premiums for the same from the rent or other charges due or payable to Landlord hereunder or under any other agreement until Tenant has been fully reimbursed therefore; at Tenant's election, Landlord shall reimburse Tenant for the payment of premiums. Every ten (10) years of the Term, commencing on the tenth (10<sup>th</sup>) anniversary of the Commencement Date, the minimum insurance limits specified in this Section 20 shall double.

## **21. DEFAULT AND REMEDIES.**

A. If any one or more of the following events (herein sometimes called "Events of Default") shall occur:

(1) if the Landlord shall default in the due and punctual payment of any amounts payable under this Lease when and as the same shall become due and payable, and such default shall continue for a period of thirty (30) days after written notice of default from Tenant to Landlord; or

(2) if default shall be named by Landlord in the performance of or compliance with any of the covenants, agreements, terms or provisions contained in this Lease, other than those referred to in the foregoing subsection (1), and such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord; or

(3) if Landlord or any Guarantor shall file a voluntary petition of bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, liquidator or similar official of Landlord or any Guarantor or of all or any substantial part of its properties or of the Premises or the interest of Landlord therein; or

(4) if within ninety (90) days after the commencement of any proceeding against Landlord or any Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Landlord or any Guarantor, of any custodian, trustee, receiver, liquidator or similar official of Landlord or any Guarantor or of all or any substantial part of its properties or of the

Premises or the interest of Landlord therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not have been vacated; or

(5) if the Premises shall become subject to (i) any tax lien or (ii) any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's lien or materialmen's lien or other lien of any nature whatsoever arising as a consequence of Landlord's failure to pay for any work or materials supplied at Landlord's request in connection with the Premises and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Tenant by the title company insuring the interest of Tenant under this Lease within thirty (30) days after the same is filed or recorded, irrespective of whether the same is superior or subordinate in lien or other priority to the interest of Tenant hereunder and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Premises or is only a matter of record or notice; or

(6) if any part of the Premises is (i) annexed by any municipal authority without the express written approval of Tenant, and/or (ii) taken by condemnation, requisition or otherwise; or

(7) if Tenant's full use and enjoyment of the Premises or any part thereof is prohibited, restricted, limited or subject to interference in any way; or

(8) if any Guarantor shall default in the due and punctual payment of any amounts as and when the same shall become due and payable;

then, Tenant shall have the right, but not the obligation, and without further notice to Landlord, to (i) cure or correct such default and if, in connection therewith, Tenant shall incur, suffer or sustain any cost or expense (including, without limitation, attorneys' fees and expenses), then Landlord shall upon demand, reimburse Tenant for all such costs and expenses together with interest thereon at the rate which is the lesser of (i) the highest legal rate or (ii) twelve percent (12%) per annum, or (iii) terminate this Lease and render it of no further force and effect, and in connection therewith Tenant shall be entitled to collect from Landlord an amount equal to the aggregate costs incurred by Tenant or its vendors or contractors in connection with the Phase IV Project (the aggregate of all such costs being herein referred to as the "Project Costs"), plus an amount equal to the sum of fifty percent (50%) of the Phase IV Project Costs, as liquidated damages and not as a penalty, and as a reasonable estimate of actual additional damages that would be incurred by Tenant, the calculation of such actual damages being difficult and imprecise, or (iv) terminate any agreement with Landlord and render them of no further force and effect and, in connection therewith, Tenant shall be entitled to collect from Landlord, the Phase IV Project Costs, plus an amount equal to the sum of fifty percent (50%) of the Phase IV Project Costs, as liquidated damages and not as a penalty. The parties agree that because of the inconvenience and difficulty of ascertaining actual damages beyond Project Costs for a default by Landlord, the liquidated damages set forth above are a reasonable estimate of actual damages under the circumstances. Any amounts owed from Landlord to Tenant pursuant to the terms of this section which are outstanding at the time of any exercise by Tenant of the Purchase Option set forth in Section 9 hereof, may at Tenant's election,

be applied as a credit against the purchase price to be paid pursuant to said Purchase Option. In addition to the aforesaid right, Tenant shall have all other rights and remedies available to it at law or in equity, including the right to enforce specific performance of the Purchase Option. Nothing in this Lease contained shall be construed to effect a novation and, except as expressly provided in this Lease, any other agreement with Landlord shall not be deemed to have been modified, amended, canceled, terminated, released, satisfied, superseded or otherwise rendered of no force and effect.

B. Each right, power and remedy conferred upon the Tenant by this Lease is in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law or in equity or any other agreement with Landlord, and upon the occurrence of a default by Landlord, each such right, power and remedy herein or therein set forth or otherwise existing may be exercise singly, successively, cumulatively or in any combination, at any time, and from time to time as often and in such order and manner as may be deemed expedient by Tenant; and the exercise or the beginning of the exercise of any right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, Tenant in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any event of default or acquiescence therein.

C. Upon the expiration or termination of this Lease by Tenant as aforesaid any payment of the amounts owed by Landlord to Tenant hereunder, Tenant shall quit and peacefully surrender the Premises to Landlord; provided, however, in no event shall Tenant have the obligation to remove any improvements or otherwise restore the Premises to the condition that existed prior to the date hereof

D. In the event that Tenant shall default in the performance and/or observance of any of Tenant's covenants, agreements, conditions and obligations contained in this Lease, and thereafter fails to cure or correct such default within 180 days after receipt of written notice thereof from Landlord, then Landlord shall have the right, but not the obligation, upon notice to Tenant, to cure or correct such default and if, in connection therewith, Landlord shall incur, suffer or sustain any cost or expense (including, without limitation, attorneys' fees and expenses), then Tenant shall upon demand, reimburse Landlord for all such cost and expense, together with interest thereon at the rate which is the lesser of (i) the highest legal rate or (ii) six percent (6%) per annum. Any amounts owed from Tenant to Landlord pursuant to the terms of this section which are outstanding at the time of any exercise by Tenant of the Purchase Option set forth in Section 9 hereof may at Landlord's election, be added to the purchase price to be paid pursuant to said Purchase Option. The aforesaid remedy shall be Landlord's sole and exclusive remedy as against Tenant on account of a default by Tenant of the terms hereof

## **22. LANDLORD'S REPRESENTATIONS AND WARRANTIES.**

In order to induce Tenant to enter into this Lease, Landlord hereby covenants with and makes the following representations and warranties to Tenant:



A. As of the Commencement Date, Landlord has, and upon the sale and purchase of the Property, or any part thereof, pursuant to the Purchase Option, Landlord shall have good and marketable fee simple title to the Property, which title is and will be subject to no encumbrances, defects, liens, adverse claims or other matters other than the Permitted Exceptions. There are no leases or tenancies with respect to the Property other than this Lease. Landlord's right to possession of the Property is subject only to this Lease and the Permitted Exceptions;

B. To the best of Landlord's knowledge, there is no claim, litigation, proceeding or governmental investigation pending or threatened, against or relating to the Property, the Improvements or Appurtenant Rights or any part thereof, nor is there any dispute arising out of any contest or commitment regarding the Property, the Improvements or Appurtenant Rights or any part thereof

C. Landlord and the person executing this Lease on behalf of Landlord have full right, power and authority to execute this Lease and perform its obligations and consummate the transactions set forth in this Lease and also including the obligations set forth in any documents to be delivered by Landlord to Tenant, including, without limitation, the sale and purchase contemplated by Section 9, and this Lease is the valid, legal, binding and enforceable obligation of Landlord. There are no claims, defenses or offsets to the validity or enforceability against Landlord of this Lease or any of such documents, and the execution and filing of this Lease (or a memorandum hereof), the consummation of the transaction herein contemplated and the compliance with the terms of this Lease, do not and will not conflict with, or with the giving of notice, the passage of time, the failure to cure or otherwise, result in a breach of any of the terms or provisions of or constitute a default or violation under any indenture, mortgage, loan agreement or other instrument to which Landlord is a party or by which Landlord or the Property or Appurtenant Rights is bound, or any applicable law or regulations of any governmental authority, or judgment, order or decree of any court;

D. To the best of Landlord's knowledge, there are no violations of any ordinances, regulations, laws or statutes of any governmental agency pertaining to the Property or Appurtenant Rights or any part thereof, or the uses thereof, which have not been complied with or corrected;

E. To the best of Landlord's knowledge, the Property and the use thereof for the Phase IV Project are in full compliance with all applicable local, regional, municipal, state and federal laws, statutes, regulations, rules, orders and ordinances, and all public building or other restrictions, including subdivision regulations, environmental and hazardous waste regulations and zoning ordinances, and all private restrictions;

F. Landlord has not, nor to the best of Landlord's knowledge or belief has any predecessor in title or interest, executed or caused to be executed any document with or for the benefit of any governmental authority or other person imposing a charge on, or restricting or governing, the development, use or occupancy of the Property or Appurtenant Rights that is not a Permitted Exception;

G. To the best of Landlord's knowledge, there is no pending or threatened condemnation, eminent domain or similar proceeding affecting the Property or Appurtenant Rights, or any part thereof, Landlord has not received any notice of any such proceeding, nor is any such proceeding or any assessment contemplated by any governmental authority, nor is there any pending litigation or suit threatened or asserted which could result in a lis pendens being lawfully filed against the Property;

H. Except for matters initiated by Tenant, no petition or application has been filed or proceeding otherwise begun, that has not been terminated, with any governmental authority to change or impose or challenge any zoning or other land-use restriction affecting the Property, not to the best knowledge and belief of Landlord has any such petition, application or proceeding been threatened;

I. There are no attachments, judgments, executions, or voluntary or involuntary proceedings in bankruptcy contemplated by or pending or threatened against Landlord or any Guarantor;

J. There are no City of Huntsville or County of Madison, or, to the best of Landlord's knowledge, other governmental moratoria on the creation of new emission sources, the issuance of building permits, or construction or usage of water or sewer connections affecting the Property;

K. To the best of Landlord's knowledge, Pulaski Pike and Bob Wade Lane, as they pass by the Property, are open, public, dedicated rights of way, and on the Commencement Date, Tenant will have free vehicular access to such streets, and there is no proposal or pending action to close, vacate or restrict the use of or access to any portion of such streets;

L. Neither the Property nor any part thereof has been designated as, or contains, a historic site, an archeological site, a historic resource, a historic structure, or to be within a historic district, by the City, the County, or to the best of Landlord's knowledge, the State of Alabama or the U.S. Department of the Interior or any governmental unit, body, commission, agency, department or subdivision, and to the best knowledge of Landlord no formal determination of eligibility for such designation has been made by any of the foregoing, and no petition or proceeding for any such designation or determination is pending;

M. To the best of Landlord's knowledge, the Property does not contain any of the following substances, applied as a finish or otherwise: lead or lead-based paint, polyvinyl chloride, asbestos, radon, polychlorinated biphenyls, any substance emitting formaldehyde, including without limitation urea foam insulation;

N. To the best of Landlord's knowledge, except for the Permitted Exceptions, there are no collective bargaining, labor or employment agreements, management or brokerage agreements, warranties, consulting agreements, service, maintenance, repair, construction, utility, supply and demolition contracts or other agreements affecting or creating the Property, off-site facilities serving the Property, or the Appurtenant Rights, or oral agreements or offers currently in effect relating to said matters or other labor or employment agreements or service, maintenance, repair,

utility, rental or supply contracts, or any other contract, agreement or undertaking, whether written or oral, affecting the Property that are not cancelable and that will not have been canceled by Landlord at or prior to the date hereof other than any such agreements or contracts, copies of which Landlord has delivered to Tenant prior to the Commencement Date and which Tenant has approved in writing;

O. To the best of Landlord's knowledge, there is no special legislation or intergovernmental agreement regulating the jurisdiction, development or use of the Property;

P. All crops and other vegetation and all personal property of any kind on the Property on the Commencement Date shall thereupon become the property of Tenant with full right of Tenant to remove, alter, convert to its own use or destroy without permission from or liability to any other person;

Q. Landlord is not a "foreign person" as that term is defined in Code Section 1445(f) or any successor thereto;

R. There are no unresolved disputes concerning the purchase of the Property or the Appurtenant Rights by Landlord or the construction, repair or maintenance of the improvements or any portion thereof;

S. Except for the Permitted Exceptions, at closing there will be no easements burdening the Property for the benefit of any land owned or controlled, directly or indirectly, solely or in part, by Landlord, or if there is, Landlord shall disclaim it or assign the benefits of it to Tenant;

T. Landlord has not received any notice of any violation or alleged violation of any law, zoning, ordinance, municipal ordinance, code or regulation affecting the Property or Appurtenant Rights nor has Landlord received notice of any legal action or investigation of any kind involving the Property or Appurtenant Rights;

U. No work has been performed nor is in progress by Landlord, and no materials have been furnished by Landlord for the Property or any portion which might give rise to mechanics', materialmen's or other liens against the Property or any portion thereof;

V. To the best of Landlord's knowledge, the Property (and no portion thereof): (i) has never been the site of any activity which would violate any past or present Law, including any Environmental Law; and (ii) is not presently being used nor at any time in the past has been used as a dump or other waste disposal site;

W. There are no adverse parties in possession of the Property or any of its parts and no other parties in possession, and no party that has been granted any license, lease or other right relating to the use or possession of the Property;

X. There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion of it, except the Lease;

Y. To the best of Landlord's knowledge, there are no actions, suits, claims, proceedings or causes of action which are pending or have been threatened or asserted against, or are affecting, Landlord, the Property or any part of it, in any court of before any arbitrator, board or governmental or administrative agency or other person or entity which might have an adverse effect on the Property or any portion of it or on Tenant's ability (or that of co-located suppliers) to operate the Property as a Project and uses ancillary thereto from and after the Commencement Date;

Z. Landlord is not prohibited from consummating the transaction contemplated in this Lease by any law, regulation, agreement, instrument, restriction, order or judgment; and

AA. Landlord has the legal power and authority to enter into this Lease and to make the respective commitments made in this Lease, and to the extent that any authorization, approval or consent of any other government authority, body or agency or third party is required for it to enter into this Lease, and make the commitments contained in this Lease, such authorizations, approvals and consents have been duly obtained in accordance with applicable law and procedures. In furtherance of the foregoing, Landlord has adopted or entered into the original and duly authorized resolutions and/or agreements attached hereto as Exhibit E and made a part hereof.

The above covenants, representations and warranties and all other covenants, representations and warranties contained in this Lease shall be deemed re-made on the closing pursuant to the Purchase Option, and shall survive the execution of this Lease and the purchase of the Property or any part thereof by Tenant, and shall not be merged therein or with the deeds.

23. NONMERGER.

If both Landlord's and Tenant's estates in the Premises shall, at the same time, become vested in the same owner, this Lease shall nevertheless not be extinguished by application of the doctrine of merger, except as otherwise expressly elected by the owner and with the prior consent of all Leasehold Mortgagees.

24. ESTOPPEL CERTIFICATES.

Landlord shall, at any time and from time to time, upon not less than ten (10) days prior written notice from Tenant, execute, acknowledge and deliver to Tenant, in form and content satisfactory to Tenant and/or any Leasehold Mortgagee, a written statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that same is in full force and effect as modified, and stating the modifications), that the Tenant is not in default hereunder (or if any default by Tenant has occurred and is continuing, then Landlord shall specify the nature and period of existence thereof and any action which Landlord has taken or proposes to take with respect thereto), the date to which Tenant has paid rent and other charges or such other accurate certification as Tenant or any Leasehold Mortgagee may reasonably require, and agreeing to provide copies to any Leasehold Mortgagee of all notices from Landlord to Tenant. It is intended that any such statement delivered pursuant to the terms of this section may be relied upon

by any Leasehold Mortgagee or prospective Leasehold Mortgagee and their respective successors and assigns.

**25. MODIFICATIONS.**

None of the covenants, terms or conditions of this Lease to be kept and performed by either party shall in any manner be altered, waived, modified, changed or abandoned except by a written instrument, duly signed, acknowledged and delivered by each party to the other part; and no act or acts, omission or omissions, or series of acts or omissions, or waiver, acquiescence or forgiveness by either party as to any default in or failure of performance, either in whole or in part by the other party, of any of the covenants, terms, and conditions of this Lease, shall be deemed or construed to be a waiver of the rights at all times thereafter to insist upon the prompt, full and complete performance of each and all the covenants, terms, and conditions hereof thereafter to be performed in the same manner and the same context as the same are herein covenanted to be performed.

**26 NOTICES.**

All notices, demands, or other communications desired or required to be given under any of the provisions of the Lease shall be in writing. Any notices or demands from either party to the other shall be deemed to have been sufficiently given one (1) regular business day after a copy thereof has been delivered to nationally recognized overnight courier service or sent by telecopier with a confirmation of receipt, or four (4) days after deposit in the United States Postal Service by registered or certified mail, postage prepaid and return receipt requested, in accordance with the following:

If to Landlord:           The Industrial Development Board of the City of Huntsville  
205 Church Street  
Post Office Box 408  
Huntsville, Alabama 35804  
Attention: Secretary

If to Tenant:           Toyota Motor Manufacturing, Alabama, Inc.  
1 Cottonvalley Drive  
Huntsville, Alabama 35810  
Attention: General Manager, Administration

With copies to:       General Counsel  
Toyota Motor Manufacturing, Alabama, Inc.  
Mail Code: Legal-NA  
25 Atlantic Avenue  
Erlanger, Kentucky 41018-3188  
Fax: (859) 746-4190

Daniel M. Wilson  
Maynard, Cooper & Gale, P.C.

655 Gallatin Street  
Huntsville, Alabama 35801

or at such other address as either party may hereafter furnish by written notice to the other party in accordance with the terms hereof. Notices sent by an attorney on behalf of a party which is his/her client shall be deemed made by such party.

27. GOVERNING LAW.

This Lease shall be construed and enforced in accordance with the laws of the State of Alabama.

28. RECORDATION OF LEASE.

At the election of Tenant, this Lease, or a short form memorandum of this Lease, shall be recorded, or filed, in the appropriate public records. Contemporaneously with the execution of this Lease, Landlord shall execute and deliver to Tenant a short form of memorandum of this Lease in the form of Exhibit F attached hereto and made a part hereof, in recordable form, containing the names of the parties and, the legal description of the Premises, the term of this Lease, the existence of the Purchase Option and any other information required or acceptable to Tenant.

29. TIME OF ESSENCE.

Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

30. SEVERABILITY.

In the event that in any jurisdiction the law of which shall apply, any provision of this Lease shall be finally adjudicated invalid or unenforceable in whole or in part or shall cause this Lease to be unenforceable in whole or in part, such provision shall be limited for purposes of such jurisdiction to the extent necessary to render the same and the remainder of this Lease valid and enforceable, or shall be exercised from this Lease for purposes of such jurisdiction, as circumstances require to preserve the validity and enforceability of the remainder of this Lease and this Lease shall be construed for purposes of such jurisdiction as if said provision ab initio had been incorporated herein as so limited or had not been included herein, as the case may be. In the event any such provision is so limited and eliminated, the party for whose benefit such provision was previously intended shall specify a substitute obligation reasonably tailored to provide the same or similar outcome or economic benefit as the limited or eliminated provision, and the counter party shall perform such substitute obligation.

31. SUCCESSORS AND ASSIGNS.

All of the covenants, agreements, conditions and undertakings contained in this Lease shall extend to and inure to the benefit of and be binding upon the successors and permitted assigns of the respective parties hereto the same as if they were in every case specifically named, and shall run

with the land, and whenever in this Lease reference is made to either of the parties hereto, it shall be held to include and apply to, wherever applicable, the successors and assigns of such party. Landlord shall not convey any interest in the Property or Appurtenant Rights or assign this Lease without the prior written consent of Tenant, which may be withheld by Tenant in its discretion.

32. RECITALS: HEADINGS AND EXHIBITS.

The recitals to this Lease are hereby incorporated by this reference and made a part hereof and shall be deemed covenants and representations binding upon and applicable to the parties hereto.

Headings of paragraphs are for convenience and reference only and shall not be construed as part of this Lease. All exhibits and schedules referred to herein and attached hereto are a part of this Lease.

33. DUE EXECUTION AND COUNTERPARTS.

All of the parties hereto represent and warrant that they each have the legal right, power and authority to enter into this Lease and to consummate the transactions contemplated hereby by the execution, delivery and performances of this Lease have been duly authorized and no other action is requisite to the valid and binding execution, delivery, and performance of this Lease. This Lease may be executed in counterparts, each of which the executed and delivered shall be deemed an original.

34. FURTHER ASSURANCES.

Landlord shall take such actions and execute such further instruments, agreements or other documents as may be necessary or convenient in order to consummate the transactions hereby or to confirm any of the provisions hereof to be performed by Landlord or to be delivered by Landlord, as may be reasonably requested by Tenant.

35. TENANT'S AND LANDLORD'S COSTS.

Landlord shall bear all costs and expenses (including attorney's fees) incurred by Landlord in connection with the negotiation, preparation and execution of the Lease and operation thereunder. Tenant shall bear all costs and expenses (including attorney's fees) incurred by the Tenant in connection with the negotiation, preparation and execution of this Lease and operation thereunder.

36. MISCELLANEOUS.

A. This Lease constitutes the entire agreement and understanding of the parties with respect to the Lease of the Property by Landlord to Tenant, and the option of Tenant to purchase the Property and Improvements, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, representations, or covenants with respect to such matters not contained herein.

B. Any representation made herein by Landlord shall be deemed to be a representation made also on the basis of the knowledge and acts of Landlord's agents, employees, beneficiaries, counsel, partners, officers and directors.

C. Any portion of this Lease not completed or fulfilled at or by closing on the sale and purchase of the Property contemplated by Section 9 shall not merge with the deal and shall survive the closing of said transaction as a continuing agreement by and between parties.

D. The enumeration herein of remedies available to a party shall not limit or be interpreted to waive any other remedies or rights available to such party at law or in equity, except for limitations and waivers expressly stated in this Lease. Examples and words of inclusion (e.g., "including") shall not be construed as a limitation on the breadth of meaning of the phrase or word referenced or preceding, and any other conflict between such referenced or preceding phrase or word and the example or inclusion phrase or word shall be resolved by construing such example or inclusion phrase or word as an addition to the referenced or preceding phrase or word.

E. Tenant and Landlord represent one another, each with respect to its own actions, that no broker or real estate consultant which has not been fully paid has been employed or was used by it or was instrumental in connection with the transaction evidenced by this Lease or the lease or the sale of the Property. Tenant and Landlord each agree to indemnify the other from any loss, cost or expense, including attorney's fees, which results from any act or claim which is inconsistent with the portion of the foregoing representation made by the party who is not in such instance the indemnified party.

### **37. LANDLORD'S LIABILITY.**

Landlord shall have no personal liability with respect to the provisions of Sections 5.B.(2), 6.E.(2), 9.E.(2), 1 LA., 11.B., 11.G., 11.11., 16, 17.A., 22.A. and 22.X. of this Lease, and Tenant's sole recourse under this Lease with respect to said provisions shall be against the Property, the Improvements and the Appurtenant Rights; provided, however, that the preceding limitation on Landlord's personal liability shall not apply, and Landlord shall be personally liable under the provisions of this Lease enumerated above, to the extent that (i) circumstances giving rise to a claim under any of the foregoing enumerated provisions were actually caused by the Landlord, or (ii) Landlord has proceeds or contract or other rights relative thereto, including but not limited to insurance policies, title insurance policies, contracts, agreements, indemnifications, guaranties, warranties, awards, claims and/or causes of action (collectively, "Landlord's Rights"). Tenant shall have the right in Landlord's name to pursue Landlord's Rights with respect to the provisions enumerated above and to enforce and apply for Tenant's benefit any of such rights, including but not limited to the right to bring suit, all at Tenant's sole expense. Landlord shall cooperate fully with Tenant in its efforts to pursue and realize on Landlord's Rights. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IT IS EXPRESSLY AGREED THAT ANY PECUNIARY LIABILITY OR OBLIGATION OF THE LANDLORD HEREUNDER SHALL BE LIMITED SOLELY TO THE NET REVENUES RECEIVED BY THE LANDLORD FROM ANY DISPOSITION OF THE PHASE IV PROJECT OR FROM**



**THE TENANT, AND NOTHING CONTAINED IN THIS LEASE SHALL EVER BE CONSTRUED TO CONSTITUTE A PERSONAL OR PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OF THE LANDLORD OR AGAINST ANY OFFICERS, DIRECTORS OR EMPLOYEES THEREOF, AND IN THE EVENT OF A BREACH OF ANY UNDERTAKING ON THE PART OF THE LANDLORD CONTAINED IN THIS LEASE, NO PERSONAL OR PECUNIARY LIABILITY OR CHARGE PAYABLE DIRECTLY OR INDIRECTLY FROM THE GENERAL REVENUES OF THE LANDLORD SHALL ARISE THEREFROM; PROVIDED, HOWEVER, THAT THE LIMITATION OF LIABILITY CONTAINED HEREIN APPLIES ONLY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE, AND SHALL IN NO WAY LIMIT OR REDUCE THE OBLIGATIONS OF THE CITY TO GUARANTEE THE FULL PAYMENT AND PERFORMANCE OF ALL OF LANDLORD'S OBLIGATIONS HEREUNDER, AS SET OUT IN EXHIBIT B HERETO.**

**38. ALTERNATIVE DISPUTE RESOLUTION.**

In the event of a dispute concerning this Lease or the parties' obligations hereunder, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, the parties agree to submit the matter in dispute to binding arbitration. Written notification of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes or, if the parties so agree, the relevant rules of another arbitration entity or organization agreed upon by the parties. In any case, regardless of any rules of the selected arbitration entity or organization to the contrary, only one arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in Huntsville, Alabama, or if the parties agree on another location, that other location. The prevailing party shall be entitled to an award of attorneys' fees. The arbitration shall be governed by the United States Arbitration Act, 9. U.S.C. §§1-16.

**39. CONFIDENTIALITY.**

The provisions of Section 7.8 of the Project Diamond Agreement are hereby incorporated into this Lease by reference.

**40. CONFLICTS.**

The parties expressly acknowledge that in the event of a conflict between any provision of this Lease and any provision of the Project Diamond Agreement, the terms and provisions of this Lease shall control.

**41. RIGHT TO SET OFF.**

Notwithstanding anything to the contrary contained herein, at any time throughout the term of this Lease, either party hereto may set off and reduce any amounts owing to the other party by any amounts then owing from that other party.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officials as of the date first above written.

**LANDLORD:**

**INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF HUNTSVILLE**, an Alabama public  
corporation

By: \_\_\_\_\_  
Hundley Batts  
Its: Vice Chairman

Date of Landlord's Execution \_\_\_\_\_, 2012

**TENANT:**

**TOYOTA MOTOR MANUFACTURING,  
ALABAMA, INC.**, an Alabama corporation

By: \_\_\_\_\_  
Jim Bolte  
Its: President

Date of Tenant's Execution \_\_\_\_\_, 2012

**ACKNOWLEDGMENT OF BOARD**

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said County and State hereby certify that **Hundley Batts**, whose name as Vice Chairman of the **BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE**, a public corporation organized under the laws of the State of Alabama, is signed to the foregoing Sub-Ground Lease Agreement and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2012

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT OF TENANT**

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify **Jim Bolte**, whose name as President of **TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.**, an Alabama corporation, is signed to the foregoing Sub-Ground Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2012

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **INDEX OF EXHIBITS**

<b>Exhibit A</b>	<b>Legal Description of the Property/Site Plan</b>
<b>Exhibit B</b>	<b>Resolutions of the City of Huntsville</b>
<b>Exhibit C</b>	<b>Form of Statutory Warranty Deed</b>
<b>Exhibit D</b>	<b>Endorsements for Leasehold Title Policy and Owner's Title Policy</b>
<b>Exhibit E</b>	<b>Resolutions and Agreements of Landlord</b>
<b>Exhibit F</b>	<b>Memorandum of Sub-Ground Lease</b>

**EXHIBIT A**  
**SITE PLAN**

**North Huntsville Industrial Park - Site Plan**



**EXHIBIT B**  
**RESOLUTIONS OF THE CITY OF HUNTSVILLE**

**(see attached)**

Adopted: \_\_\_\_\_

RESOLUTION NO. 12- \_\_\_\_\_

WHEREAS, the State of Alabama, Madison County, the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc., entered into an agreement for the location of a Toyota manufacturing facility in the North Huntsville Industrial Park, as amended by: that certain First Amendment to Project Diamond Agreement dated as of December 4, 2003 (the "First Amendment"); by that certain Second Amendment to Project Diamond Agreement dated as of December 16, 2004 (the "Second Amendment"); by that certain Third Amendment to Project Diamond Agreement dated as of October 14, 2010 (the "Third Amendment"); and by that certain Fourth Amendment to Project Diamond Agreement dated as of July 1, 2011, and by that certain Fifth Amendment to Project Diamond Agreement dated as of July 26, 2012 (the "Fifth Amendment;" the original agreement, as modified by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment (hereinafter referred to as the "Project Diamond Agreement"); and

WHEREAS, each of the parties to the agreement are responsible for certain financial and other obligations thereunder; and

WHEREAS, the City of Huntsville has authorized the lease of an approximately 108 acre tract and an approximately 26 acre tract in the North Huntsville Industrial Park (collectively, the "Phase IV Land") to the Industrial Development Board of the City of Huntsville pursuant to a Ground Lease Agreement between the City of Huntsville and the Industrial Development Board of the City of Huntsville in substantially the form attached hereto as Exhibit A (the "Ground Lease"), for lease, and potential ultimate sale, to Toyota Motor Manufacturing, Alabama, Inc., pursuant to a Sub-Ground Lease Agreement between the Industrial Development Board of the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc., in substantially the form attached hereto as Exhibit B (the "Sub-Ground Lease"); and

WHEREAS, the Ground Lease and Sub-Ground Lease provide for certain options and rights of first refusal in favor of Toyota Motor Manufacturing, Alabama, Inc., with respect to the Phase IV Land; and

WHEREAS, pursuant to the Sub-Ground Lease, the Industrial Development Board is required to perform certain obligations; and

WHEREAS, it is the intent of the City Council of the City of Huntsville, to approve the Fifth Amendment to Project Diamond Agreement in substantially the form attached hereto as Exhibit C, to ratify the Project Diamond Agreement, to approve the Ground Lease, to approve the form of the Sub-Ground Lease and to guaranty the



performance of the Industrial Development Board under the Fifth Amendment to Project Diamond Agreement and the Sub-Ground Lease referenced hereinabove.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into an Amendment to Project Diamond Agreement, which said agreement is attached hereto and identified as "Fifth Amendment to Project Diamond Agreement among the City of Huntsville, the State of Alabama, Madison County, Alabama, and Toyota Motor Manufacturing, Alabama, Inc.," consisting of fourteen (14) pages including Exhibits A and B, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama, and the City Council of the City of Huntsville does hereby ratify the Project Diamond Agreement; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into a Ground Lease which said agreement is attached hereto and identified as "Ground Lease Between the City of Huntsville and the Industrial Development Board of the City of Huntsville," consisting of forty-six (46) pages including Exhibits, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does hereby authorize the Mayor to enter into a Sub-Ground Lease which said agreement is attached hereto and identified as "Sub-Ground Lease Between the City of Huntsville and the Industrial Development Board of the City of Huntsville," consisting of sixty-two (62) pages including Exhibits, and the date of July 26, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an execute copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama; and

**BE IT FURTHER RESOLVED**, that the City of Huntsville does hereby guarantee the performance of all obligations of the Industrial Development Board under both the Fifth Amendment to Project Diamond Agreement and the Sub-Ground Lease between the Industrial Development Board of the City of Huntsville and Toyota Motor Manufacturing, Alabama, Inc.; and

BE IT FURTHER RESOLVED, that any options and rights of first refusal set out in the Sub-Ground Lease are binding on the City for so long as title to such land remains in the City, and the City agrees to allow Toyota Motor Manufacturing, Alabama, Inc., to exercise any such options on the terms and conditions set out in the Sub-Ground Lease by providing notice thereof to the City, and the City agrees in such event to honor the obligations of the Landlord under the Sub-Ground Lease.

ADOPTED this the \_\_\_\_ day of July, 2012.

---

President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the \_\_\_\_ day of July, 2012.

---

Mayor of the City of Huntsville,  
Alabama

**EXHIBIT C**

**FORM OF STATUTORY WARRANTY DEED**

Send tax notice to:

Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF ALABAMA    )  
COUNTY OF MADISON )

**STATUTORY WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS,

THAT TN CONSIDERATION of Ten Dollars (\$10.00) and other good and valuable consideration to the undersigned grantor, \_\_\_\_\_ (hereinafter "Grantor"), in hand paid by \_\_\_\_\_ (hereinafter "Grantee") the receipt of which is hereby acknowledged, Grantor does by these presents, grant, bargain, sell and convey unto Grantee all that tract or lot of land lying in the County of Madison, State of Alabama, and more particularly described as follows, subject, however, to the permitted exceptions described on Exhibit "A" attached hereto and incorporated herein by reference (the "Permitted Exceptions").

TO HAVE AND TO HOLD, to the said Grantee, its heirs and assigns, forever.

IN WITNESS WHEREOF, Grantor has executed and sealed this indenture, and delivered this indenture to Grantee, all this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

GRANTOR:

\_\_\_\_\_

[add notary acknowledgment]

## **EXHIBIT D**

### **ENDORSEMENTS FOR LEASEHOLD TITLE POLICY AND OWNER'S TITLE POLICY**

The Final Policy will also include the endorsements attached hereto (specimen copies), which shall be the following:

- a.     **C**omprehensive (ALTA 9) (subject to receipt of affidavit relating to the survey)
- b.     **A** c c e s s
- c.     **L** e a s e h o l d
- d.     **A** L T A 3.0 Z o n i n g
- e.     **S** u r v e y

**EXHIBIT E**  
**RESOLUTIONS AND AGREEMENTS OF LANDLORD**

**(see attached)**

STATE OF ALABAMA     )

MADISON COUNTY     )

I, the undersigned Secretary of the Industrial Development Board of the City of Huntsville, Alabama (the "Board") hereby certify that the pages attached hereto constitutes true, correct and complete excerpts from the minutes of a regular meeting of the Board duly called and held on July 27, 2012, at which a quorum was present and voting throughout.

WITNESS my official signature and the corporate seal of the Board this the 27<sup>th</sup> day of July, 2012.

---

Acting Secretary, The Industrial  
Development Board of the City of  
Huntsville, Alabama

[S E A L]

EXCERPTS FROM MINUTES OF A REGULAR MEETING  
OF THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF HUNTSVILLE, ALABAMA

\_\_\_\_\_

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE, ALABAMA (the "Board") met in regular session in Huntsville, Alabama, on July 27, 2012, at 8:30 o'clock a.m. On roll call, the following were found to be:

	<u>PRESENT</u>	<u>ABSENT</u>
W.F. Sanders, Jr.	_____	_____
Charles Granger	_____	_____
Richard Reeves	_____	_____
Mike Segrest	_____	_____
Hundley Batts	_____	_____
Barbara Buice	_____	_____
Andrew J. Tutt	_____	_____

\*\*\*\*\*

The Vice-Chairman stated that the next order of business was the consideration of a Tax Abatement Agreement in connection with a proposed major addition to an industrial research enterprise project involving **TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.** (the "Company"), consisting of the construction of an approximately 290,000 square foot new manufacturing facility for the production of six-cylinder automotive engines, known as "Phase IV," to be located on approximately 197.5 acres at 1 Cottonvalley Drive, Huntsville, Alabama 35810 (the "Original Land"); and the ground lease by the Board from the City of Huntsville (the "Ground Lease") and the sub-ground lease by the Company from the Board (the "Sub-Ground Lease") of an approximately 26 acre tract and an approximately 108 acre tract adjacent to the Original Land (the "Additional Land") and the construction of an access roadway and related improvements thereon; and including proposed inducement resolutions and the grant of abatements permitted by law in connection with the Project. There then followed a general discussion regarding the Project, the inducement resolutions, and the grant of tax abatements, whereupon \_\_\_\_\_ introduced the following resolutions in writing:

RESOLUTION ACCEPTING AS A PROJECT OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA, A PROPOSAL BY TOYOTA MOTOR MANUFACTURING, ALABAMA, INC., AN ALABAMA CORPORATION, FOR THE CONSTRUCTION, EQUIPPING AND INSTALLATION OF A MAJOR ADDITION TO AN EXISTING INDUSTRIAL DEVELOPMENT PROJECT KNOWN AS PHASE IV, AND GRANTING THE TAX ABATEMENTS PERMITTED TO BE GRANTED BY SECTIONS 40-9B-1 TO 40-9B-7 OF THE CODE OF ALABAMA (1975), AND THE ENTRY INTO A GROUND LEASE AGREEMENT WITH THE CITY OF HUNTSVILLE AND A SUB-GROUND LEASE AGREEMENT WITH THE COMPANY FOR ADDITIONAL LAND.

---

BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE (the "Board") AS FOLLOWS:

Section 1. The Board is in receipt of:

(a) a Petition by TOYOTA MOTOR MANUFACTURING, ALABAMA, INC. (the "Company") attached hereto as Appendix I and incorporated herein by reference, for the grant of abatement of all taxes allowed to be abated under section 40-9B-4 of the Code of Alabama (1975), as amended, with respect to the Project.

(b) a Tax Abatement Agreement between the Board and the Company attached hereto as Appendix II and incorporated herein by reference, under the terms of which the Board agrees to grant to the company an abatement of various taxes with respect to the Project.

(c) an Application by the Company attached as Appendix III, for the abatement of all taxes allowed to be abated under section 40-9B-4 of the Code of Alabama (1975), as amended, with respect to the Project.

(d) a Ground Lease Agreement between the City of Huntsville, as landlord, and the Board, as tenant, attached hereto as Appendix IV, for the Additional Land (the "Ground Lease"), under the terms of which the Board agrees to lease the Additional Land from the City of Huntsville.

(e) a Sub-Ground Lease Agreement between the Board, as landlord, and the Company, as tenant attached hereto as Appendix V, for the Additional Land (the "Sub-Ground Lease"), under the terms of which the Board agrees to lease the Additional Land to the Company.

Section 2. The Board does hereby accept and approve, as a project of the Board, the Project (as defined in the Tax Abatement Agreement) proposed by the Company such Project to be acquired, constructed, installed and equipped at a site or sites within the geographical jurisdiction of the Board.



Section 3. The Board does hereby grant to the Company an abatement of all of the taxes allowed to be abated under sections 40-9B-1 to 40-9B-7 of the Code of Alabama (1975), as amended, with respect to the Project, including without limitation, section 40-9B-4.

Section 4. In order to evidence and confirm its grant of tax abatements to the Company, the Board hereby formally approves the Tax Abatement Agreement. The Chairman, Vice-Chairman, or Board member as Acting Chairman of the Board of Directors of the Board, or any one of them, are hereby authorized and directed to execute and deliver said Tax Abatement Agreement to the Company in substantially the form submitted to this meeting, and attached hereto as Appendix II, with such changes, insertions, deletions, and omissions as may be approved by the Chairman, Vice Chairman, and/or Acting Chairman the execution of said Tax Abatement Agreement by the Chairman, Vice Chairman or Acting Chairman being conclusive evidence of such approval, and the Secretary is hereby authorized to attest said Tax Abatement Agreement and affix the seal of the Board thereto.

Section 5. The Board hereby formally approves the Ground Lease. The Chairman, Vice-Chairman, or Board member as Acting Chairman of the Board of Directors of the Board, or any one of them, are hereby authorized and directed to execute and deliver said Ground Lease to the Company in substantially the form submitted to this meeting, with such changes, insertions, deletions, and omissions as may be approved by the Chairman, Vice Chairman, and/or Acting Chairman the execution of said Ground Lease by the Chairman, Vice Chairman or Acting Chairman being conclusive evidence of such approval, and the Secretary is hereby authorized to attest said Ground Lease and affix the seal of the Board thereto.

Section 6. The Board hereby formally approves the Sub-Ground Lease Agreement. The Chairman, Vice-Chairman, or Board member as Acting Chairman of the Board of Directors of the Board, or any one of them, are hereby authorized and directed to execute and deliver said Sub-Ground Lease to the Company in substantially the form submitted to this meeting, with such changes, insertions, deletions, and omissions as may be approved by the Chairman, Vice Chairman, and/or Acting Chairman the execution of said Sub-Ground Lease by the Chairman, Vice Chairman or Acting Chairman being conclusive evidence of such approval, and the Secretary is hereby authorized to attest said Sub-Ground Lease and affix the seal of the Board thereto.

Section 7. The Chairman, the Vice Chairman, the Acting Chairman, the Secretary, the Acting Secretary and the members of the Board of Directors of the Board are hereby separately authorized and directed to take any and all actions that they may deem advisable in order to give effect to the intent of this resolution, and in connection therewith to perform in the name of the Board such actions and to execute, deliver, seal, attest and accept such other ancillary documents and certificates as may be necessary or advisable, and all such actions taken are hereby ratified and confirmed as valid and binding on the Board.

Section 8. This resolution shall take effect immediately.

[remainder of page left blank intentionally]

\_\_\_\_\_ moved that said resolution be adopted, which motion was seconded by \_\_\_\_\_, and upon the said motion being put to a vote, it was unanimously adopted by the affirmative votes of all members of the Board of Directors who were present.

The Vice-Chairman stated that the next order of business was the consideration of an industrial development grant application for the Phase IV Major Addition of TOYOTA MOTOR MANUFACTURING, ALABAMA, INC. There then followed a general discussion. Whereupon \_\_\_\_\_ introduced the following resolution in writing:

[remainder of page left blank intentionally]

**RESOLUTION APPROVING AN APPLICATION FOR A SITE PREPARATION GRANT**

BE IT RESOLVED, by the Board of Directors of The Industrial Development Board of the City of Huntsville, Alabama as follows:

The Board of Directors does hereby approve the request of TOYOTA MOTOR MANUFACTURING, ALABAMA, INC. (the "Company") for assistance from The Industrial Development Board of the City of Huntsville, Alabama (the "Board") in the obtaining of an industrial development grant in the maximum amount possible from the State Industrial Development Authority (the "Authority") and does hereby agree to assume the responsibilities of applicant and grantee, under the applicable statutes, for such a grant. The terms and conditions specified in the grant application are accepted and agreed to by the Board. The form of "Application for Industrial Development Grant" presented to this meeting is hereby approved in substantially the form attached hereto, with such changes, additions or deletions as the Acting Chairman or Vice Chairman may approve, the execution thereof being conclusive evidence of such approval, and the Acting Chairman and the Vice Chairman of the Board of Directors (either alone or jointly with the other) are hereby authorized and directed to execute the said application for and on behalf of the Board and to cause the said application to be filed with the Authority. Each of the Acting Chairman and Vice Chairman of the Board of Directors and the Secretary, Acting Secretary and Treasurer of the Board is hereby authorized to take, with the full authority of the Board, any and all necessary steps to work with the Company and the Authority to the end that said grant may be obtained, applied and accounted for in accordance with law.

\_\_\_\_\_ moved that said resolution be adopted, which motion was seconded by \_\_\_\_\_ and upon the said motion being put to a vote, it was unanimously adopted by the affirmative votes of all members of the Board of Directors who were present.

\*\*\*\*\*

There being no further business to come before the meeting, the meeting was duly adjourned.

\_\_\_\_\_  
Hundley Batts, Vice-Chairman

\_\_\_\_\_  
Amy Locke, Acting Secretary

**SEAL**

**APPENDIX I**

**TOYOTA MOTOR MANUFACTURING, ALABAMA, INC. PETITION**

**APPENDIX II**

**TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.'S  
TAX ABATEMENT AGREEMENT**

**APPENDIX III**

**TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.'S APPLICATION**

**APPENDIX IV**

**GROUND LEASE AGREEMENT BETWEEN CITY OF HUNTSVILLE AND BOARD**

**APPENDIX V**

**SUB-GROUND LEASE AGREEMENT BETWEEN BOARD AND TOYOTA MOTOR  
MANUFACTURING, ALABAMA, INC.**



**EXHIBIT F**

**MEMORANDUM OF SUB-GROUND LEASE AGREEMENT**

This Instrument Prepared By:

Leslie Caren Sharpe  
MAYNARD, COOPER & GALE, P.C.  
655 Gallatin Street  
Huntsville, Alabama 35801  
(256) 551-0171

STATE OF ALABAMA            )

COUNTY OF MADISON        )

**MEMORANDUM OF SUB-GROUND LEASE AGREEMENT**

This Memorandum of Sub-Ground Lease Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2012, is made with respect to the following described Sub-Ground Lease dated effective \_\_\_\_\_, 2012, between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF HUNTSVILLE** (the "Landlord") and **TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.**, an Alabama corporation (the "Tenant").

1.     Date of Ground Lease. Landlord and Tenant have entered into the Ground Lease Agreement effective the \_\_\_\_ day of \_\_\_\_\_, 2012, with a commencement date of \_\_\_\_\_, 2012 (the "Lease").

2.     Term. The term of the Lease is ten (10) years.

3.     Description of Leased Premises. The Leased Premises is two parcels of land located in the North Huntsville Industrial Park in Madison County, Alabama, more particularly described in Exhibit "A" attached hereto.

This Memorandum of Sub-Ground Lease is prepared for recording and for the purpose of making a public record of said Lease, and it is intended that the parties shall be subject to all of the provisions of said Lease, and that nothing herein shall be deemed to alter or change any of the terms or provisions of said Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Sub-Ground Lease on the day and year first above written.

STATE OF ALABAMA     )

COUNTY OF MADISON    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify Jim Bolte, whose name as President of **TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.**, an Alabama corporation, is signed to the foregoing Sub-Ground Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:\_\_\_\_\_

**Exhibit A**

**to**

**Memorandum of Sub-Ground Lease Agreement**

•

EXHIBIT C

FIFTH AMENDMENT TO PROJECT DIAMOND AGREEMENT

## **FIFTH AMENDMENT TO PROJECT DIAMOND AGREEMENT**

**THIS FIFTH AMENDMENT TO PROJECT DIAMOND AGREEMENT** (this “Fifth Amendment”) dated effective as of July \_\_, 2012 (the “Effective Date”), is entered into by and among the **STATE OF ALABAMA** (the “State”), **MADISON COUNTY, ALABAMA** (the “County”), the **CITY OF HUNTSVILLE, ALABAMA** (the “City”), and **TOYOTA MOTOR MANUFACTURING, ALABAMA, INC.**, an Alabama corporation (“Toyota”).

### **Recitals**

A. The parties have previously entered into that certain Project Diamond Agreement dated as of February 5, 2001, as amended by: that certain First Amendment to Project Diamond Agreement dated as of December 4, 2003 (the “First Amendment”); by that certain Second Amendment to Project Diamond Agreement dated as of December 16, 2004 (the “Second Amendment”); by that certain Third Amendment to Project Diamond Agreement dated as of October 14, 2010 (the “Third Amendment”); and by that certain Fourth Amendment to Project Diamond Agreement dated as of July 1, 2011 (the “Fourth Amendment;” the original agreement, as modified by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and this Fifth Amendment, is hereinafter referred to as the “Project Agreement”), relating to Toyota’s facility in Huntsville, Alabama.

B. Toyota has agreed to further expand the scope of the Project, as set out in the original Project Agreement, and has agreed to make an additional \$88,300,000 capital investment for the construction of a 2 GR Line Engine facility that, when completed, will create an additional 126 new jobs (the “Phase IV Project”).

C. The parties wish to amend the Project Agreement, in order to provide for certain additional agreements of the parties in connection with Toyota’s commitment to construct the Phase IV Project, in accordance with the terms and conditions set forth in this Fifth Amendment.

### **Agreement**

**NOW, THEREFORE**, in consideration of the foregoing recitals and in further consideration of the mutual agreements set forth herein, effective as of the Effective Date, the State, City, County, and Toyota hereby agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning set out in the Project Agreement.
2. **Amendment.** Section 2.4 of the Project Agreement is hereby amended by adding the following to the end thereof:

“The Phase IV Project shall be subject to the provisions of this Section 2.4, and shall be eligible for the Capital Investment Credits, without any contractual limitation imposed thereon by this Project Agreement.”

3. **Amendment.** Section 2.5 of the Project Agreement is hereby amended by adding the following to the end thereof:

“The Phase IV Project shall be subject to the provisions of this Section 2.5. In addition, the City shall apply for (or cause the Huntsville IDB to apply for) a \$150,000 site development grant through the State of Alabama, and the City or the Huntsville IDB, as applicable, shall pay such amount to Toyota when received.”

4. **Amendment.** The Project Agreement is amended by adding the following new Section 2.13:

**2.13. State Capital Cost Reimbursement Commitment.** In consideration of Toyota's commitment to the Phase IV Project, and subject to the execution of a separate agreement between the State and Toyota with respect thereto, the State agrees to reimburse Toyota for up to \$1,000,000 of capital costs incurred by Toyota in the course of the developing, constructing and equipping the Phase IV Project (the “**State Commitment**”), said payment to be made in one installment, payable as soon as practicable after the completion of its obligations as out in such agreement with respect to the construction of the Phase IV Project and the creation by Toyota of at least 126 new jobs (the “**Phase IV Jobs Target**”).

5. **Amendment.** Effective retroactively to September 15, 2003, Paragraph 3.3(b) of the Project Agreement is amended by deleting “\$2,000,000.00” as set out therein and substituting in place thereof “\$1,000,000.00,” it being the intention of the parties to correct a mutual mistake made in Paragraph 4 of the First Amendment. The City and Toyota agree that Paragraph 4 of the First Amendment was intended to confirm the agreement regarding payment of the Purchase Price payable to the Huntsville IDB by Toyota in connection with the Purchase Option, as contained in the Ground Lease and Option Agreement dated as of June 7, 2001 between Toyota and the Huntsville IDB (the “**Ground Lease**”), through the agreement by Toyota to reduce the obligations of the City under the Project Agreement by an amount equal to the Purchase Price. The City hereby acknowledges receipt of the Purchase Price pursuant to the amendment set out in this Paragraph 2, and agrees that it shall cause the Huntsville IDB to convey the real property covered by the Ground Lease to Toyota, as provided under Section 9 of the Ground Lease.

6. **Amendment.** The Project Agreement is hereby amended by inserting the following new Section 3.3(c):

“(c) The County shall be obligated to provide Toyota up to \$100,000 in site preparation services in connection with the Phase IV Project. The County's obligation to provide in-kind site preparation services shall be commensurate with the services that were provided by the County for each of the Phase I Project, the Phase II Project, or the Phase III Project. In addition, the County will provide to Toyota an economic development grant in the amount of \$250,000, payable upon completion of the Phase IV Project.”

7. **Amendment.** Section 3.5 of the Project Agreement is hereby amended by the following:  
(i) adding the following new Section 3.5(iv):

“(iv) The State, through the Department of Commerce, will support an application by either the City or County for funding up to \$400,000 either from ALDOT or Alabama Industrial Access Road and Bridge Corporation, such improvements to be mutually agreeable by the parties to this Project Agreement;”

- (ii), deleting the reference to the year “2001” in the last paragraph of such Section, and inserting in place thereof the year “2012,” and (iii) deleting the reference to the year “2002” in the last paragraph of such Section, and inserting in place thereof the year “2013.”

8. **Amendment.** Section 3.20 of the Project Agreement is hereby amended by inserting the following to the end thereof:

“The City hereby agrees to cause Huntsville Utilities or TVA, as appropriate, to (i) provide to Toyota a TVA Valley Investment Initiative rate credit (5 years) in the amount of up to \$974,112, and (ii) work in good faith to identify and approve a qualifying project for a TVA Valley Advantage Grant in the amount of \$100,000.”

9. **Amendment.** The Project Agreement is hereby amended by deleting the existing Section 3.22 and inserting the following new Section 3.22 Purchase Option Concerning Remainder of Park and Commercial Tract in place thereof:

**“3.22 Purchase Option Concerning Remainder of Park and Commercial Tract.** As soon as is practicable after the Effective Date of the Fifth Amendment, the City and Toyota will enter into a Real Estate Purchase Option Agreement (the “**Option Agreement**”), providing Toyota the following options to purchase real property owned by the City:

- (a) An option, for a period of two (2) years from the date of the Option Agreement (the “**Commercial Option Period**”) to purchase from the City all of the approximately 36 acre commercially zoned tract of land located at the northeast intersection of Bob Wade Lane and Pulaski Pike, more particularly described on Exhibit “A” attached hereto (the “**Commercial Tract**”). The purchase price for the Commercial Tract shall be determined as of the date the Commercial Tract Option is exercised, by a certified commercial appraiser acceptable to both the City and Toyota. Notwithstanding the foregoing, if, during the two (2) year period beginning on the Effective Date of the Fifth Amendment (the “**ROFR Period**”), a third party makes a written offer to purchase the entire Commercial Tract from the City, the City shall provide such offer to Toyota, and Toyota shall have a right of first refusal to purchase the Commercial Tract on the exact same economic terms and conditions as set out in such offer; provided that Toyota must exercise such right within ninety (90) days of the date of receipt of such written offer from the City, and must purchase the entire Commercial Tract.

The Commercial Tract Option shall provide that on and after the end of the ROFR period, if not otherwise sold or under contract as provided herein, the City agrees not to sell the Commercial Tract to any third party for the remainder of the Commercial Option Period. During the five (5) year period commencing on the Effective Date of the Fifth Amendment, the City shall not be able to sell any part of the Commercial Tract unless it sells the entire tract.

(b) An option, until September 30, 2018 (the “**Industrial Park Option Period**”) to purchase from the City all or any part of the remaining approximately 173 acres of land owned by the City and located in the North Huntsville Industrial Park, and more particularly described on Exhibit “A” attached hereto (the “**Industrial Tract**”), at a purchase price of \$10,000 per acre.

(c) The Option Agreement will provide, among other things, that the City shall, to the extent required, subdivide any of the property to be purchased by Toyota thereunder, and that the City will pay for the cost of the survey, the engineering costs of preparing the subdivision plat and the cost of an owner’s policy of title insurance required by Toyota in connection with such purchase, in an amount equal to the purchase price of the property purchased; provided, however, the City shall not be responsible for the cost of any subdivision improvements. The City agrees to record a memorandum of the Option Agreement, signed by the City and Toyota, in the office of the Judge of Probate of Madison County, Alabama.”

10. **Amendment.** The Project Agreement is hereby amended by adding the following new Section 3.23 **Conveyance of Additional Land:**

“3.23 **Conveyance of Additional Land.** As soon as is practicable after the Effective Date of the Fifth Amendment, the City shall lease to the Huntsville IDB, for the annual rental of \$1.00 per year and for a ten (10) year term, both (i) the approximately 26 acre tract of land owned by the City and located immediately to the north of the Project Site, and (ii) the approximately 108 acre tract of land owned by the City and located in the North Huntsville Industrial Park and located immediately to the east of the Project Site (both tracts of land are more particularly described on Exhibit “B” attached hereto and are hereinafter collectively referred to as the “**Phase IV Land**”). The City shall also cause the Huntsville IDB to enter into a sublease (the “**Sublease**”) with Toyota for the Phase IV Land, on substantially the same terms and conditions as the lease between the City and the Huntsville IDB, with each lease also providing for the right in favor of the lessee/sublessee to require the City to grant a perpetual easement over the Phase IV Land in favor of Toyota, providing access, the right to repair and maintain any improvements constructed thereon by Toyota, and prohibiting the construction of any improvements thereon by any party other than Toyota, without Toyota’s prior written consent. The Sublease shall otherwise be on substantially the same terms and conditions as the Ground Lease, as amended, except that it will provide that at any time during the lease term, at Toyota’s request, City will agree to negotiate with Toyota for an option to acquire the



Phase IV Land, at an option price of \$1.00 for each of the two tracts that comprise the Phase IV Land. The City hereby represents and warrants that, as of the Effective Date of the Fifth Amendment, the City has good, valid, marketable and legal title, in fee simple, to the Phase IV Land, free and clear of all liens, encumbrances, easement and servitudes, except as to those which are a matter of public record, which are approved by Toyota and which will not interfere with the use of the Phase IV Land by Toyota for its intended purpose. Toyota shall obtain an owner's or leasehold owner's policy of title insurance, as the case may be, for the Phase IV Land, containing such endorsements as Toyota may request and issued by a title company licensed to do business in State and approved by Toyota, insuring title to the Phase IV Site in the amount of \$2,830,000. The City hereby agrees to pay or cause the Huntsville IDB to pay the relevant title company all of its fees and premiums attributable to the searches and the issuance of all title policies covering the Phase IV Land (including the leasehold owner's policy if Toyota elects to lease the land), together with the cost of any endorsements required by Toyota."

11. **Amendment.** The Project Agreement is hereby amended by deleting the existing Section 5.1 and inserting the following new Section 5.1 in place thereof:

5.1 **Start-Up Training: Utilization of Training Funds.**

(a) The State, through AIDT, originally agreed to provide to Toyota amounts up to, but not exceeding, the sum of Six Million Dollars (\$6,000,000) which were to be used to reimburse Toyota and/or to reimburse or pay AIDT for costs of all start-up training for the intended workforce for the Phase I Project for the recruitment, screening, assessment and on the job training of employees for the Phase I Project. In addition, the State, through AIDT, has previously agreed that when Toyota committed to locate the Phase II Project on or adjacent to the Project Site, the State, through AIDT, would provide Toyota amounts up to, but not exceeding, the sum of Eight Million Dollars (\$8,000,000), said amount later increased to Ten Million One Hundred Thousand Dollars (\$10,000,000), which amount was to be used to reimburse Toyota and/or AIDT for the costs of all start-up training for the intended workforce for the Phase II Project for the recruitment, screening, assessment and on the job training of employees for the Phase II Project. In addition, the State, through AIDT, agreed to provide an additional \$20,000 per new job created in connection with the Phase III Project, up to a maximum amount of Four Million Eight Hundred Forty Thousand Dollars (\$4,840,000), such amount to be in addition to any amounts set forth in Article 5.4 hereof as unused training funds from the Phase II Project. The State, through AIDT, hereby agrees to provide an additional \$20,000 per new job created, up to a maximum amount of Two Million Five Hundred Twenty Thousand Dollars (\$2,520,000), such amount to be in addition to any amounts set forth in Article 5.4 hereof as unused training funds from the Phase III Project

(b) The training costs to be defrayed by the funds committed by the State under this Article 5 shall include (i) the costs of the wages and benefits for trainers, (ii) the charges of any Toyota affiliates which relate to the wages and benefits and air fare for trainers provided by Toyota affiliates both in the United States and Japan, (iii) round trip air fare for trainers, (iv) round trip air fare for trainers for travel to U.S. domestic suppliers, (v) round trip airfare within the United States for those employees of Toyota and Toyota's affiliates who are necessary to support the activities of the Phase IV Project, (vi) any necessary equipment, materials, training aides, manuals and/or other relevant training materials for training purposes, (vii) Toyota's PILOT team costs and expenses, and (viii) AIDT Costs (hereinafter defined), (ix) travel costs of TMMAL trainees including hotel, ground transportation, and meals that are associated with project related off-site training at other Toyota affiliates. The parties acknowledge and agree that some of the above costs may have been incurred prior to the date of this Fifth Amendment, but those costs shall nevertheless be eligible training costs under this Article 5. Toyota shall, from time to time, after the Effective Date, submit itemized invoices to the State, through AIDT, for such training costs and the State shall promptly remit payment of such invoices to Toyota. Toyota understands that these training funds will also be used to reimburse AIDT for providing, in-kind, a portion of the start-up training necessary to prepare Toyota's intended workforce ("AIDT Costs"). However, AIDT's reimbursement rate for these in-kind services shall be determined based on AIDT's customary rates and charges currently in effect with respect to other industrial training projects in the automotive industry.

(c) Any unexpended training cost funds not expended by December 31, 2015, shall revert to the State of Alabama for its exclusive use.

12. **Amendment.** The Project Agreement is hereby amended by deleting Section 5.3(b) and inserting in place thereof the following new Section 5.3(b):

"(b) If, at any time prior to reaching full production of the Phase IV Project, Toyota determines that the total number of jobs at the Project Site, including all Phases of the Project, is less than 1,144 jobs, Toyota shall so notify AIDT, and Toyota and AIDT, on behalf of the State, will negotiate in good faith for a reduction in the training program for the Phase IV Project commensurate with the then anticipated employment levels."

13. **Amendment.** Section 5.4 of the Project Agreement is hereby amended by deleting the existing Section 5.4 and inserting the following new Section 5.4 **Carryover of Unused Funds** in place thereof:

"5.4 **Carryover of Unused Funds.** The State, through AIDT, hereby agrees that the unused portion (if any) of the \$15,738,677.81 which was committed by the State pursuant to Section 5.1 of the Project Agreement for the Phase III Project will be carried over for use in connection with the start-up training for the

intended workforce for the Phase IV Project. The parties agree that the current amount of these unused training dollars is \$2,284,427 as of May 31, 2012. Such unused funds shall be added to the State's Two Million Five Hundred Twenty Thousand Dollar (\$2,520,000) commitment of start-up training funds for the Phase IV Project, and shall be available for any job-related training purposes identified by Toyota."

14. **Amendment.** Section 7.6 of the Project Agreement is hereby amended to provide that all notices to the State shall be sent to the following:

**To the State of Alabama:**

Honorable Robert Bentley, Governor  
State Capitol  
600 Dexter Avenue  
Montgomery, Alabama 36130

**With a Copy to:**

Finance Director  
State Capitol: Room N-105  
600 Dexter Avenue  
Montgomery, Alabama 36130

**And a Copy to:**

Debt Management Division  
Alabama Department of Finance  
100 North Union Street; Suite 224  
Montgomery, Alabama 36130

15. **Amendment.** The Project Agreement is hereby amended so that any reference to the Alabama Development Office shall be deemed to mean the Alabama Department of Commerce.

16. **Project Agreement to Remain in Effect.** Except as specifically modified by this Fifth Amendment, all terms and conditions of the Project Agreement, as amended, shall remain in full force and effect in accordance with its terms, and shall apply with respect to the Phase IV Project.

17. **Governing Law, Successors and Assigns, etc.** This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of Alabama and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18. **Headings.** The descriptive headings of the sections of this Fifth Amendment are for convenience reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

19. **Date.** The date of this Fifth Amendment is intended as and for a date for the convenient identification of this Amendment and for determining the Effective Date hereof, and is not intended to indicate that this Amendment was executed and delivered on said date.

20. **Severability.** If any provision of this Fifth Amendment shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. **Counterparts.** This Fifth Amendment may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**[remainder of page intentionally blank – signature pages to follow]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date their signature was properly notarized.

**STATE OF ALABAMA**

By: \_\_\_\_\_  
Robert Bentley  
Governor

**STATE OF ALABAMA                    )**

**COUNTY OF MONTGOMERY        )**

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared Robert Bentley, as Governor of the State of Alabama whose name is signed to the foregoing instrument, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, makes oath that he, as such official and with full authority, has read the foregoing instrument and knows the contents thereof, executed the same voluntarily for and as the act of said State of Alabama on this date.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

CITY OF HUNTSVILLE

By: \_\_\_\_\_  
Tommy Battle  
Mayor

STATE OF ALABAMA )

COUNTY OF MADISON )

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared Tommy Battle, as Mayor of the City of Huntsville, Alabama whose name is signed to the foregoing instrument, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, makes oath that he, as such official and with full authority, has read the foregoing instrument and knows the contents thereof, executed the same voluntarily for and as the act of said City of Huntsville on this date.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

COUNTY OF MADISON

By: \_\_\_\_\_

Mike Gillespie  
Chairman, Madison County  
Commission

STATE OF ALABAMA )

COUNTY OF MADISON )

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared Mike Gillespie, as Chairman of the Madison County Commission whose name is signed to the foregoing instrument, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, makes oath that he, as such official and with full authority, has read the foregoing instrument and knows the contents thereof, executed the same voluntarily for and as the act of said Madison County on this date.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

TOYOTA MOTOR MANUFACTURING,  
ALABAMA, INC.

By: \_\_\_\_\_  
Jim Bolte  
President

STATE OF ALABAMA )

COUNTY OF MADISON )

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared Jim Bolte, as President of Toyota Motor Manufacturing, Alabama, Inc. whose name is signed to the foregoing instrument, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, makes oath that he, as such officer and with full authority, has read the foregoing instrument and knows the contents thereof, executed the same voluntarily for and as the act of said corporation on this date.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_



**EXHIBIT "A"**

**DESCRIPTION OF COMMERCIAL TRACT**

EXHIBIT "A"  
DESCRIPTION OF COMMERCIAL TRACT

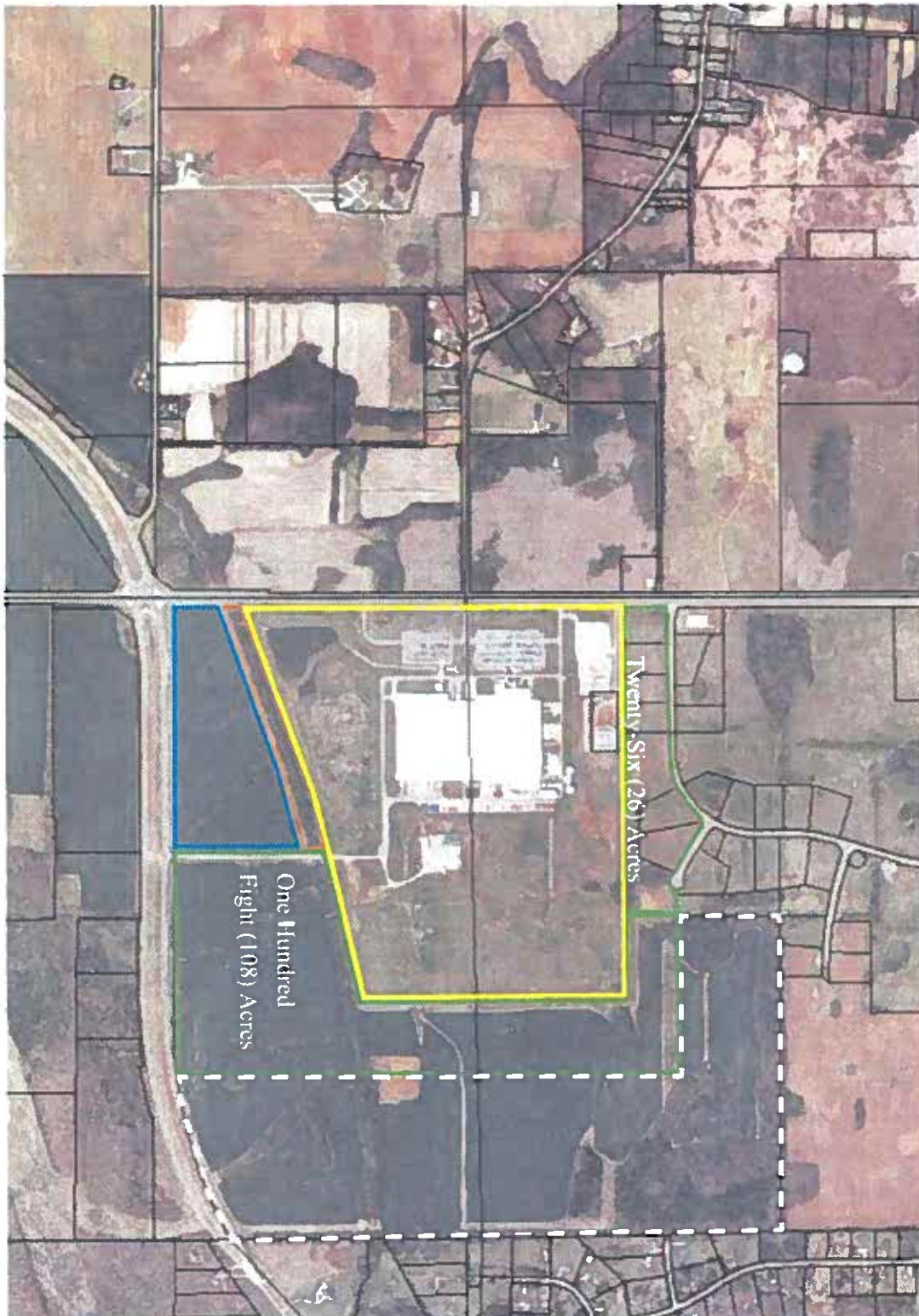


North Huntsville Industrial Park - Site Plan

**EXHIBIT "B"**  
**DESCRIPTION OF ADDITIONAL LAND**

EXHIBIT "B"  
DESCRIPTION OF ADDITIONAL LAND

North Huntsville Industrial Park - Site Plan



# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 7/26/2012

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Fifth Amendment to Toyota Agreement

Document Name: Fifth Amendment to Toyota Agreement

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

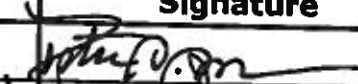

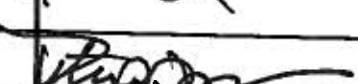
Account Number:

## Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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## Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		